

STATEMENT OF ENVIRONMENTAL EFFECTS

21 WATTLE AVENUE, FAIRLIGHT

PROPOSED DWELLING ALTERATIONS AND ADDITIONS

**PREPARED ON BEHALF OF
SketchArc**

SEPTEMBER 2019

TABLE OF CONTENTS

1.	INTRODUCTION	3
2.	BACKGROUND	
2.	SITE DESCRIPTION AND LOCALITY	5
3.	THE DEVELOPMENT PROPOSAL	6
4.	ZONING & DEVELOPMENT CONTROLS	7
5.	EP&A ACT – SECTION 4.15	15
6.	CONCLUSION	16

APPENDICES

APPENDIX A – LOCALITY ANALYSIS

APPENDIX B – CLAUSE 4.6 – HEIGHT

1. INTRODUCTION

This application seeks approval for the construction of dwelling alterations and additions upon land at Lot 40 in DP 11828 which is known as **No. 21 Wattle Avenue, Fairlight**.

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 Base Surveying, Ref No. 13-45A and dated 01/03/17.
- Architectural Plans prepared by SketchArc, Project No. 1712 and dated 29/01/19.
- BASIX Certificate No. A324632_04 issued 22 January 2019.
- Geotechnical Report prepared by White Geotechnical Group, Job No. J1886 and dated 14 August 2018.

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.

2. BACKGROUND

A previous application, DA 2018/1518) was lodged with Council on 12/09/18. Council correspondence dated 6 November 2018 raised a number of issues in relation to height, setbacks and excavation. Following detailed discussions with Council the plans were been amended to include the following:

- Lowered the overall height from RL31.050 to RL30.30, by reducing roof pitch
- Increased first floor front building setback to be 6m in compliance with Council controls
- Reduced the bulk and scale to the front elevation by removing front balcony and pitched roof over.
- Reduced ceiling in storeroom to provide for additional landscaping depth above.

The Council also requested justification in relation to the extent of demolition to determine if the proposal is dwelling alterations and additions or a new dwelling. Reference is made to the planning principle established in *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*. In this regard it is our opinion that the proposal should be considered as alterations and additions to an existing dwelling for the following reasons:

- The resultant dwelling will present as a two storey dwelling, with the garage level and ground floor remaining substantially the same.
- The proposal does not reduce existing landscaping, rather it improves options for landscaping through the removal of paving.
- The proposal does not have any impact on surrounding heritage items.
- The change to the streetscape is predominantly the new first floor level with the footprint of the existing ground floor being retained.
- Access arrangements to the dwelling are being retained, that is double garage and pedestrian access adjacent to the western boundary.
- The demolition is very minor, comprising internal walls to accommodate a new internal stair and some alteration to improve amenity on the front elevation.
- The proposal does not increase site cover, rather it provides for additional landscaping through the removal of some existing paving.
- The proposed additions comply with the front setbacks and floor space ratio and retain existing side setbacks which is consistent with the Council DCP requirements. The proposal results in a variation to the maximum height control and this is discussed in detail in the clause 4.6.
- The proposal provides for a new pitched roof form to complement the existing dwelling.
- The existing garaging is to be retained.
- The only excavation required is within the existing building footprint and as such will not be visible from the street or the public domain.
- The existing building is to be retained with a new first floor proposed above.

In summary the proposal provides for a new first floor with the existing ground floor being retained and as such is considered to be alterations and additions only.

Notwithstanding the above, Council still raised issue and the application was withdrawn.

Current Plans

Following further discussions with Council Officer, Nicholas England, the following amendments to the plan have been made with the current application:

- Basement rumpus increased in size (remains within existing building footprint).
- Planting provided adjacent to front boundary (above garage) and adjacent to western side boundary.
- Deck provided along front elevation of ground floor with low pitched roof over.
- First floor level provided with increased setback. This level is setback. 2.6m behind the front wall of the ground floor.
- Deck provided along front elevation of first floor with low pitched roof over.
- Deck provided along western elevation to formalise front entry.
- First floor addition on western side dwelling. Setback of 1.0m provided to western boundary.

2. SITE DESCRIPTION AND LOCALITY

The site is identified as Lot 40 in DP 11828 which is known as No.21 Wattle Avenue, Fairlight. The site is located on the southern side of Wattle Avenue with a street frontage 12.19m. The site is rectangular in shape and has an area of 431.8m² with a depth of 35.43m. The locality is depicted in the following map:



Site Location Map

The site falls towards the street with levels of RL24.58 at the rear of the site and RL17.47 adjacent to the street frontage. The subject site currently comprises a single storey stone and rendered masonry dwelling with tiled roof. A double garage is located forward of the dwelling with nil setback to the street frontage. The wall of the garage extends the width of the property frontage. A lawn and terrace are located over the garage. The rear yard is terraced to provide for levelled areas.

The site is depicted in the following photographs:



View of Subject Site from Street

The existing surrounding development comprises a mix of single detached dwellings, semi attached dwellings and multi dwelling housing comprising of 1, 2 and three storeys. 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 to the existing dwelling including a new first floor level. The proposed additions will comprise a mixture of external masonry and clad walls and a pitched tiled roof.

The proposal seeks to provide some excavation at ground level to provide for additional storage. The excavation is proposed to the east of the existing garage. This excavation will be behind the existing front wall and beneath the lawn area. This excavation will not be visible from the public domain or the adjoining properties. It is also proposed to provide a new rumpus area beneath the footprint of the existing dwelling. An internal stair will provide access to this rumpus room.

At existing ground floor level some internal alterations are provided to provide for a more open floor plan and create an internal stair to access all levels of the dwelling. The proposal provides for a new deck on the front elevation with pitched roof over. The deck is setback 5.733m from the front boundary which is consistent with the existing front setback of the dwelling structure. A new deck is provided along the western elevation to improve access to the main dwelling entry.

The proposal provides for a new first floor level to provide for 3 bedrooms, ensuite and bathroom. This level will be provided with a setback of 1.3m to the eastern boundary and setbacks varying from 1.3m to 2.7m to the sites and western side boundaries. A setback of 8.33m is provided to the front boundary as measured from the wall of the dwelling at this level.

All collected stormwater will continue to discharge to the existing drainage system which drains to the street gutter.

The proposal will result in the following numerical indices:

Site Area: 431.8m²

Existing Total Open Space: 221.83m² or 51.4%

**Proposed Total Open Space: 217.88m² or 50.5%
(as defined)**

Existing Soft Landscape: 140.25m² or 59.1% of req'd total open space

Proposed Soft Landscape: 173.07m² or 79% of req'd total open space

Proposed FSR: 217.95m² or 0.50:1

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

The subject site is not identified as bushfire prone land on Council's Bushfire Prone Land Map and therefore the provisions of Planning for Bushfire Protection 2006 do not apply.

5.2 Manly Local Environmental 2013



Extract of Zoning Map

The subject site is zoned R1 General Residential. The objectives of the R1 Zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *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:

- ❑ Ensuring the proposal compliments the existing streetscape and the existing surrounding properties.
- ❑ Retaining the existing amenity to the surrounding residences.

- Providing a development that is compatible in terms of bulk, scale and height to surrounding properties.

Single dwellings and associated structures are a permissible use in the R1 General 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	9.249m	Clause 4.6 Variation in Appendix 1
Clause 4.4 Floor Space Ratio	0.60:1	0.50:1	Yes

The following clauses also apply:

Clause 6.1 Acid Sulfate Soils

The subject site is identified as Class 5 of the Acid Sulfate Soil map. The proposal is supported by a geotechnical report and it is not considered that the proposal will have any impact on the water table. No further information is required in this regard.

Clause 6.2 Earthworks

A Geotechnical Report has been prepared by White Geotechnical which in summary provides:

The proposed development is suitable for the site. No geotechnical hazards will be created by the completion of the proposed development provided it is carried out in accordance with the requirements of this report and good engineering and building practice.

Clause 6.4 Stormwater Management

All collected stormwater will continue to discharge to the street gutter in accordance with Council controls.

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 proposal provides for additions to an existing single storey dwelling and will not have a detrimental impact on the view of the site from the street. The proposed additions incorporate a new first floor level which will be compatible with the existing surrounding development on this side of Wattle Avenue.

The intended outcomes are noted as:

- i) *complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) *address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) *visually improve existing streetscapes through innovative design solutions; and*
- vii) *Incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design*

It is considered that the proposal provides for additions to an existing dwelling that are compatible with the existing surrounding streetscape. The proposal incorporates setback of at least 8.3m from the new upper level to the street frontage as measured from the wall of the dwelling. The front façade is well articulated through the use of varied setbacks and decks. The continuation of the deck along the full width of the upper level and relocation of the deck on the ground level provides for greater articulation. Further the roof forms over these elements improve the presentation to the street. Landscaping is also proposed adjacent to the front boundary above the garage which will assist in softening the proposal and improving the landscaped character of the locality.

The new works will be compatible with the style and form of the surrounding dwellings by providing for additions to an existing single storey dwelling.

Clause 3.1.1.3 Roofs and Dormers

This clause provides:

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*
- c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.*

The proposal provides for a conventional tiled pitched roof which is the predominant roof form in the locality. The proposal incorporates roof forms over the new decks on the front elevation that are complementary to the dwelling and provide modulation and articulation.

Clause 3.3 - Landscaping

The proposal works are generally located within the existing footprint and do not require the removal of any trees protected by Council's Tree Preservation Order.

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

The objectives of the clause are noted as:

- Objective 1) 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.*
- Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

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

- The proposal provides for additions to an existing single storey dwelling. The additions incorporate a first-floor level. The resultant height is compatible with the surrounding properties. In this regard the adjoining properties, No. 23 and No. 19 Wattle Street have maximum ridge height of RL30.9 and RL30.30, respectively. The proposal provides for a maximum ridge height of RL30.30.
- The proposal has been designed to maintain privacy to the adjoining properties. This has been achieved by locating all high use living areas on the ground floor with the new first floor providing for only bedrooms and bathrooms. The proposal incorporates a new deck at ground and first floor level. However, these decks are located on the front façade of the dwelling and provide for views of the street and dwelling approach and do not allow for views into the habitable areas for private open space of the adjoining properties.

- Shadow diagrams have been prepared which indicate negligible additional shadowing to the adjoining properties. The allotment is orientated north-south which ensures that adjoining properties will receive at least 3 hours of solar access to private open space and living areas on the winter solstice.
- The subject and surrounding properties do not enjoy any significant views. The proposal does not obstruct views.

Clause 3.5 - Sustainability

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

Clause 3.7 - Stormwater Management

It is proposed to connect all collected existing stormwater system which discharges to Wattle Avenue. The proposal does not increase the existing hard surface area and therefore OSD is not required.

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 D3 – 1 dwelling per 250m ²	Yes Site area is 431.8m ² . There is no change to the density.
Floor Space Ratio	Refer to LEP 0.6 :1	Yes Proposal provides for a floor space of 217.95m ² or 0.50:1 which complies with this clause.
Wall Height	Height – 6.5m	Proposed wall height varies from 5.8m to 7.8m. This non-compliance does not result in any detrimental impact. The wall height is compatible with other development in the locality. The non-compliance does not result in any additional overshadowing. The non-compliance is only the as a result of the dormer windows which are not dominate in the streetscape or the adjoining properties.

Clause/ Design Element	DCP Requirement	Compliance/Comments
Number of Storeys	Two Storeys	Yes The proposal results in a two-storey dwelling. The storage is at basement level and not visible from the street or adjoining properties.
Roof Height	2.5m above wall height	Yes
Parapet Height: 600mm above wall height.	600mm above wall height	Not applicable
Maximum Roof Pitch	35°	Yes – roof pitch matches existing.
Building Setbacks	<p>Front Setback – Min. 6.0 metres or consistent with neighbouring.</p> <p>Side Setback – 1/3 of the height of wall.</p>	<p>All new works are located behind the front wall of the existing dwelling. The new upper level is provided with an increase setback, being setback, 8.33m from the street frontage. This is considered appropriate for the following reasons:</p> <ul style="list-style-type: none"> • The decks on ground and upper level provides for articulation and modulation along the front façade. • The new first floor level is provided with an increased setback, being 2.6m behind the existing front wall of the dwelling. The deck to the upper level is setback 7.133m to the street frontage. <p>The required side setback ranges from 1.9m to 2.6m. The setbacks to the western boundary comply with this requirement. In regard to the eastern boundary it is considered that the setback as proposed is appropriate for the following reasons:</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	<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> <p>Rear Setback – Minimum 8.0 metres</p>	<ul style="list-style-type: none"> • The setback is compatible with the adjoining western building. • The deck setback of 1.0m improves access and formalises the front entry without detrimental impact on the adjoining properties. • The proposal provides for landscaping adjacent to the western boundary to improve privacy. • The setbacks to the first floor replicate the existing setback to the ground level. • The setback does not result in any unreasonable overshadowing. • The proposal does not reduce privacy to the adjoining properties this has been achieved by providing only bedrooms and bathrooms on the upper level. <p>Not Applicable</p> <p>Yes Proposal is provided with ample setback to the rear boundary.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
Landscaping/Open Space	<p>Open Space Area 3: Minimum total open space: 55% of site area.</p> <p>Minimum soft open space as % of total open space: 35%</p> <p>Minimum number of endemic trees: 1 additional tree required</p> <p>Private open space to be directly accessible from living areas. Minimum dimension 3m. Minimum area of 18m².</p>	<p>Yes This clause requires a total open space of 237.49m² and a landscaped area of 83.12m². The proposal provides for the following: Total Open Space: 217.88m² Soft Open Space: 173.07m².</p> <p>Yes The proposal does not require the removal of any significant vegetation.</p> <p>Yes The proposal retains the existing private open space and improves accessibility by the inclusion of a new sliding doors on the rear elevation of the ground floor.</p>
Parking and Access	<p>Minimum 2 Spaces per Dwelling. Garages/carports shall be sited so as to not dominate the street frontage through the use of appropriate materials. Carports forward of the building line shall be open on all sides. Maximum width of structures forward of the building line is 6.2m or 50% of site width whichever is the greater.</p>	<p>Yes Existing parking to be retained.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
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	The proposed first floor provides for side setbacks that reflect the existing ground floor. This is considered appropriate given that the amenity of the adjoining properties is maintained. The proposal does not result in unreasonable overshadowing and the privacy of the adjoining properties is maintained. The resultant dwelling is compatible with the existing streetscape, with particular regard to the two adjoining properties.
Fences	Maximum height 1.0m for solid Maximum height 1.5m where at least 30% is transparent.	Not Applicable

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 an existing dwelling without detrimentally impacting on the character of the area. The proposal does not result in the removal of any significant vegetation and there is no decrease in pervious area. 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 alterations/additions to an existing dwelling house in this zone are permissible with the consent of Council. 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 dwelling that are consistent 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 to an existing dwelling. 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. 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 dwelling upon land at **No. 21 Wattle Avenue, Fairlight** is worthy of the consent of Council.

Natalie Nolan
Grad Dip (Urban & Regional Planning) Ba App Sci (Env Health)
Nolan Planning Consultants
September 2019

APPENDIX A – LOCALITY ANALYSIS

The Wattle Avenue locality is characterised by a mix of single, two and three storey dwellings, with some more recent modern constructions. A few properties on the high side of the street provide for dormer windows on the front façade.

The roof form in this area is predominantly traditional pitched with some new modern designs providing low pitched or flat roof forms. Dwellings are constructed of a variety of materials with no consistent architectural theme.

The proposed development has been designed to complement the existing locality. The proposal provides for a car space and front fence ancillary to the existing dwelling. The design of the proposal in response to the locality and the site's constraints and opportunities and this is demonstrated in the Statement of Environmental Effects.

APPENDIX B
CLAUSE 4.6 VARIATION
VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
BUILDING HEIGHT REQUIRED BY CLAUSE 4.3 OF THE MANLY LOCAL
ENVIRONMENTAL PLAN 2015

For: Proposed Dwelling Alterations and Additions
At: 21 Wattle Avenue, Fairlight
Applicant: SketchArc

Introduction

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of dwelling alterations and additions at **21 Wattle Avenue, Fairlight**.

The specified maximum building height under Clause 4.3 (1) of the Manly Local Environmental Plan 2013 (the LEP) is 8.5m. The development proposes a departure from this numerical standard and proposes a maximum height of 9.249m.

This wall height 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.

Background

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

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

Due to the siting of the existing building and sloping topography of the site, the proposed new works will be up to approximately 9.249m in height (RL 30.30).

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

Due to the existing elevated ground level, a portion of the new roof will be up to approximately 9.249m in height above the existing ground levels.

The substantial majority of the dwelling is comfortably under Council’s maximum height control of 8.5m above existing ground level.

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

Purpose of Clause 4.6

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

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

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

Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling which are sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

Onus on Applicant

Clause 4.6(3) provides that:

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

Justification of Proposed Variation

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

Paragraph 27 of the Samadi judgement states:

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

Precondition 1 - Consistency with zone objectives

The site is located in the R1 General Residential Zone. The objectives of the R1 zone are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.
- The overall height of RL30.3 is compatible with (and does not exceed) height of the two adjoining properties, No. 19 Wattle (RL30.3) and No. 23 Wattle (RL30.9).
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

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

Precondition 2 - Consistency with the objectives of the standard

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

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

Comments

Whilst the proposal will present a minor variation to the statutory height limit as a result of the existing elevated ground floor level of the dwelling, the proposal is considered to be in keeping with the objectives of Clause 4.3.

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

The proposal is generally consistent with the height and scale of newer development in the locality. The overall height of RL30.3 is compatible with (and does not exceed) height of the two adjoining properties, No. 19 Wattle (RL30.3) and No. 23 Wattle (RL30.9).

The proposed new works to the existing dwelling are subject to a maximum overall height of 8.5m, and the proposal will provide for a height of up to 9.249m.

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

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

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the design of the existing building. In this regard the existing ground level is elevated above the natural ground level.

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m.

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

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality. The overall height of RL30.3 is compatible with (and does not exceed) height of the two adjoining properties, No. 19 Wattle (RL30.3) and No. 23 Wattle (RL30.9).
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

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

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

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

Due to the existing building design, the proposed new works will be up to approximately 9.249m in height.

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

- Compliance with the height control is constrained by the siting/design of the existing dwelling (with existing floor level elevated by up to 1.5m).
- Compliance could be achieved with a flat roof, however this would be detrimental to the design and character of the streetscape. The proposal provides for a conventional pitched roof form to match the existing dwelling and complement the character of the locality.
- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties. The overall height of RL30.3 is compatible with (and does not exceed) height of the two adjoining properties, No. 19 Wattle (RL30.3) and No. 23 Wattle (RL30.9).
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity comprises predominantly large two storey dwellings elevated above the street, this proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

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

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

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

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied

with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

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

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

Accordingly, in regard to the proposed development at 179 Woodland Street South, Balgowlah, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The development is constrained by the siting of the existing development and sloping topography of the site.
- The variation to the height control is inconsequential as it will not result in any unreasonable impact to the streetscape and the amenity of neighbouring properties.

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

In the *Wehbe* judgment (*Wehbe v Warringah Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

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

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

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

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

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

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

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

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

Comment: Not applicable.

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

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

Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum overall height of 9.249m.

This variation occurs as a result of the siting and design of the existing building.

This objection to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan

Grad Dip (Urban & Regional Planning) Ba App Sci (Env Health)

Nolan Planning Consultants

February 2019