

STATEMENT OF ENVIRONMENTAL EFFECTS

27 ALAN AVENUE, SEAFORTH

**DEMOLITION AND CONSTRUCTION OF A DETACHED
DUAL OCCUPANCY AND TORRENS TITLE SUBDIVISION**

**PREPARED ON BEHALF OF
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1. INTRODUCTION

This application seeks approval for the demolition of the existing structures and construction of a detached dual occupancy with lower level parking and torrens title subdivision on Lot 81 in DP 4889 which is known as **No. 27 Alan Avenue, Seaforth**.

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 Axiom Spatial, Job No. 19-220, Rev 2 and dated 14/11/19.
- Architectural Plans prepared by Nick Bell Architects, Revision B and dated 12/12/19.
- BASIX Certificates.
- Schedule of External Finishes
- Landscape Plan prepared by Tranquillity Landscape Design, Issue A and dated 25/10/19.
- Arboricultural Impact Assessment prepared by Truth About Trees and dated 18/10/19.
- Stormwater Management Plan prepared by NB Consulting Engineers, Job No. 1909132, Issue B and dated 06/12/19.
- Geotechnical Investigation prepared by White Geotechnical Group, Job No. J2403 and dated 26 September 2019.
- Waste Management Plan.

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 81 in DP 4889 which is known as No. 27 Alan Avenue, Seaforth. The site is a rectangular shaped allotment located at the southern side of Alan Avenue. The site has an area of 1,226.3m² with a frontage of 20.118m to Alan Avenue and a depth of 60.960m. The locality is depicted in the following map:



Site Location Map

The property slopes from the rear boundary (RL59.46) towards the street frontage (RL56.01) with a total fall of approximately 3.45m. The site is currently occupied by a single storey brick and tiled roof dwelling with attached garage and located centrally on site. Vehicular access to the site is via concrete driveway tracks located adjacent to the western side boundary.

There is no significant vegetation on site or the surrounds which will be impacted by the proposal. An Arboricultural Report has been prepared and submitted with the application. The property has a slight fall towards the street

The site is depicted in the following photographs:



View of the existing development on site from Alan Avenue

The existing surrounding development comprises a variety of single and two storey dwellings, attached dwellings and two storey apartment buildings on similar sized allotments. 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 demolition of the existing dwelling and construction of a two detached dwellings and Torrens title subdivision. The development will be constructed of a mixture of stone and lightweight cladding with a flat metal roof. Landscaping and stormwater works will be incorporated into the development.

The proposed development will be provided with setbacks to Alan Avenue ranging from 9.55m from the planter of Dwelling A and 10.3m from the terrace of Dwelling B. The lower level garages are recessed behind the terraces above. Setbacks of at least 1.5m are provided to the sites eastern and western side boundaries.

The lower level provides parking for each dwelling. Each garage is sufficient for parking 2 cars with access to the subfloor area and plant behind the garages. Internal access is provided from the garage to its appurtenant dwelling.

The layout of each dwelling comprises the following:

Ground Floor: Entry, family room, laundry, bathroom, bedroom, kitchen, dining and living room.
First Floor: Four bedrooms (main with ensuite) and bathroom.

All collected stormwater will be directed to the street gutter in Alan Avenue via rainwater reuse tanks in accordance with Council controls.

The proposal also seeks approval for the Torrens Title subdivision of one lot into two. The proposed boundary will be consistent with the proposed built form and result in the following allotments:

Proposed Lot A: 613.17m²
Proposed Lot B: 613.17m²

The proposal will result in the following numerical indices:

Site Area: 1.226.3m²
Proposed FSR: 615m² or 0.5:1
Total Open Space: 674.9m² or 55%
Landscaped Space: 394.6m² or 58% of the total open space.

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.

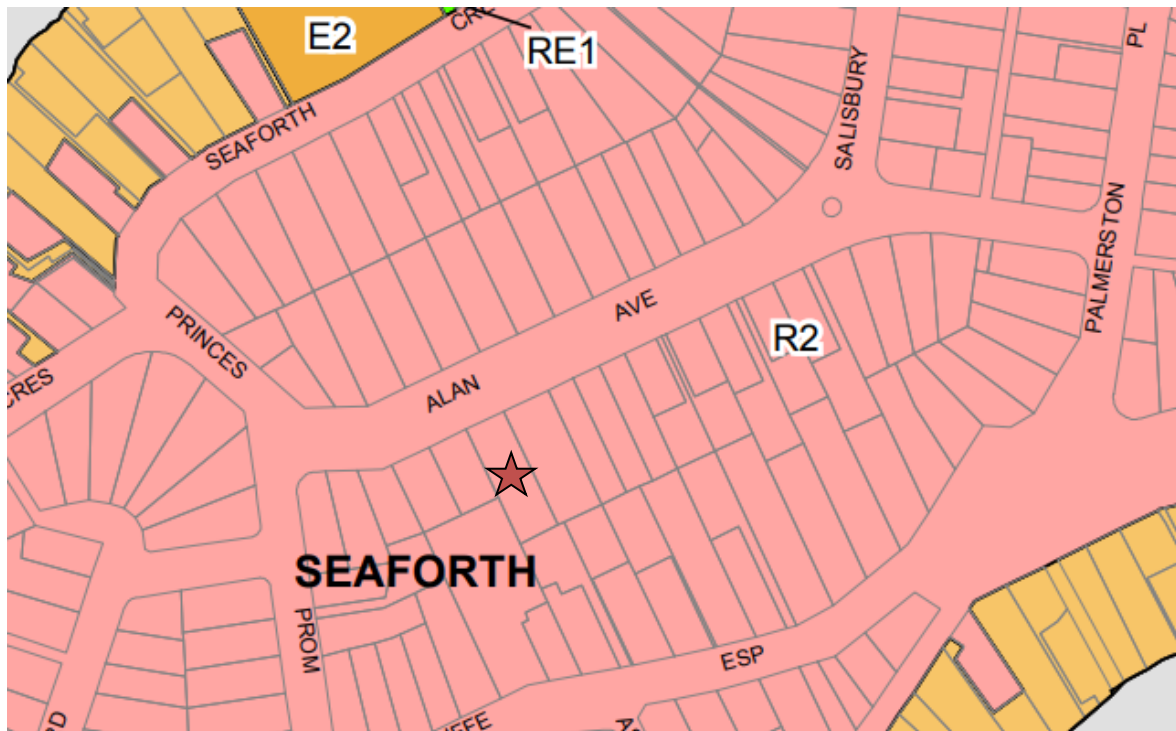
5.1 Planning for Bushfire Protection 2006



Extract of Bushfire Map

The subject site is 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 to the proposed development.

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 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.*

It is considered that the proposed development to provide for two detached dwellings which are permissible in this zone 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

The following numerical standards are applicable to the proposed development:

Clause	Development Standard	Proposal	Compliance
Clause 4.1 Minimum Allotment Size	600m ²	Each allotment is 613.17m ²	Yes
Clause 4.3 Height of Buildings	8.5m	Refer to plans	Yes

Clause	Development Standard	Proposal	Compliance
Clause 4.4 Floor Space Ratio	0.45:1	615m ² or 0.5:1	Clause 4.6 Variation provided in Appendix 1 .

Clause 6.1 Acid Sulfate Soils

The site is identified as Class 5 on Council's Acid Sulfate Soils Map. Whilst some excavation is required the land is not below 5m AHD and will not impact the water table.

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 the demolition of the existing structures and construction of two detached dwellings and Torrens title subdivision. The development presents as two detached dwellings that are well articulated through the use of balconies, varied finishes, setbacks and modulation.

It is considered that the proposal provides for a development that is compatible with the existing surrounding streetscape which comprises a mixture of single storey post-war red brick bungalows and two storey modern development (90's onwards).

The development will be compatible with the style and form of the surrounding dwellings by providing appropriate front setback and modulation of the front facade.

Clause 3.3 - Landscaping

The proposal provides ample area of the site for landscaping. A detailed landscaped plan has been prepared by Tranquility Landscape Design which provides for 5 trees and screen planting. It is noted that the design of the front setback and driveway area has incorporated landscaping within the front setback including layered screen planting to enhance the landscaped character of the locality. An Arboricultural Impact Assessment Report has been prepared by Truth About Trees and notes:

The proposed development at 27 Alan Avenue, Seaforth will require the removal of two (2) trees of low and very low retention value (trees 4 & 5).

All other trees on site and within proximity of the site can be retained.

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 all high use living areas on the ground floor with only bedrooms and bathrooms on the upper level. This ensures that reasonable privacy to the adjoining properties is maintained.
- The first floor provides for balconies however these are located on the front elevation and are orientated towards the street and as such do not result in loss of privacy to the adjoining properties. It is not considered that there will be any detrimental privacy impacts as a result of these balconies.
- The proposal provides for landscaping within the side boundary setbacks which in conjunction with dividing fences will ensure that privacy to the adjoining properties is maintained.
- Shadow diagrams have been prepared. The proposal will continue to maintain at least 3 hours of solar access to the internal living areas and rear private open space of the adjoining properties.
- The subject and surrounding properties do not currently enjoy any significant views and therefore there will be no impact on existing views.

Clause 3.5 - Sustainability

A BASIX Certificate has been submitted with the application.

Clause 3.7 - Stormwater Management

All collected stormwater will continue to be connected to the street gutter in Alan Avenue in accordance with Council controls.

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 D6 – 1 dwelling per 600m ²	Yes The current site has an area of 1226.3m ² . The proposed dual occupancy and Torrens title subdivision will provide for the following allotments: Lot A: 613.17m ² Lot B: 613.17m ²
Floor Space Ratio	Refer to LEP 0.5:1	Clause 4.6 Variation included in Appendix 1.
Wall Height	Height – 6.5m	Yes The proposal provides for a maximum wall height of approximately 6.3m.
Number of Storeys	Two Storeys	The proposal results in two detached two storey dwellings with basement parking. This is compatible with the existing surrounding development.
Roof Height	2.5m above wall height	Yes
Parapet Height: 600mm above wall height.	600mm above wall height	Yes
Maximum Roof Pitch	35°	Yes

Clause/ Design Element	DCP Requirement	Compliance/Comments
Building Setbacks	Front Setback – Min. 6.0 metres or consistent with neighbouring.	<p>Yes</p> <p>A setback of 9.5m is provided from the planter of the terrace to Dwelling A. It is noted that the wall of the dwelling is provided with a greater setback of 12.75m to Dwelling A and 23.45m to Dwelling B. The development sits well within the streetscape with the eastern adjoining development (No. 25) setback 7.7m and the western adjoining building (No. 29) is setback 8.0m to the street frontage.</p>
	Secondary setback – same as side boundary setback	Not applicable
	Side Setback – 1/3 of the height of wall.	<p>A setback of between 1.6m and 2.1m is required to the eastern and western side boundaries. The proposal provides for setbacks of 1.509m to the western boundary and 1.559m to the eastern boundary. The setbacks as proposed are considered appropriate in this instance for the following reasons:</p> <ul style="list-style-type: none"> • The non-compliance is only minor being between approximately 100-400mm. • The side elevations are well articulated to reduce bulk and scale. Each dwelling incorporates a courtyard indent which provides good modulation and provides for additional landscaping. • The non-compliance does not result in a loss of privacy, with all high use living areas on the ground floor and minimal windows on the side elevations.

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 proposed development continues to ensure at least 3 hours of solar access to the private open space of the adjoining properties. <p>Not Applicable</p> <p>Yes Ample setback is provided to the rear boundary.</p>
Landscaping/Open Space	<p>Open Space Area 3: Minimum total open space: 55% of site area.</p> <p>Minimum soft open space as 35% 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 18m².</p>	<p>Yes</p> <p>Proposal provides for the following: Total Open Space: 674.9m² or 55% of site area. Soft Open Space: 394.6m² or 58% of total open space.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
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.</p> <p>Maximum width of structures forward of the building line is 6.2m or 50% of site width whichever is the greater.</p>	<p>Yes Each dwelling is provided with 2 car parking spaces with the lower level garage. The garaging is integrated into the dwelling design and is located behind the required building line.</p> <p>N/A</p> <p>N/A</p>
First Floor Additions	<p>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</p>	Not Applicable
Fences	<p>Maximum height 1.0m for solid Maximum height 1.5m where at least 30% is transparent.</p>	<p>Yes The proposal provides for a low wall along a portion of the front boundary. This wall provides for a height that ranges from 0.985m to 1.225m which is appropriate in this instance.</p>

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 a dual occupancy development without detrimentally impacting on the character of the area. The proposal does not result in the removal of any significant vegetation and provides ample area of the site for landscaping. 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 General Residential and the construction an attached dual occupancy 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 an alternative form of housing that is 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 demolition of the existing structures and construction of a detached dual occupancy and subdivision. 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 demolition and construction of a detached dual occupancy and subdivision upon land at **No. 27 Alan Avenue, Seaforth** is worthy of the consent of Council.

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

**OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Detached Dual Occupancy
At: 27 Alan Avenue, Seaforth
Owner: O'Hanlon, Giuliano & El Khouri
Applicant: O'Hanlon, Giuliano & El Khouri

1.0 Introduction

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

2.0 Background

Clause 4.4 restricts the floor space ratio within this area of the Seaforth locality and refers to the maximum floor space ratio noted within the "Floor Space Ratio Map."

The relevant maximum floor space ratio for this locality is 0.45:1 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal provides for a total floor space of 615m² or 0.5:1.

It is contended that the development meets the objectives of Clause 4.4 and that reduction to comply with the numerical requirements do not serve any benefit.

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

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

3.0 Purpose of Clause 4.6

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

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The variation to the development standard will allow for flexibility and the proposal provides for an outcome that is compatible with the surrounding development and does not have a detrimental impact on the surrounding properties. The stated objectives of the R2 General Residential Zone, which are noted as:

- *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.*

As sought by the zone objectives, the proposal will provide for a detached dual occupancy which is 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 floor space ratio, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed. Clarification on the purpose of 4.6 has been provided by recent decision of *Rebel MH v North Sydney* that

- The required written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b) of the Sydney LEP; and
- The proposed development would be in the public interest because it is consistent with the objective of the height development standard.
- The Consent Authority has to be satisfied itself as a question of fact that the matters in sub-clause 3 are demonstrated.

It is submitted that Consent Authority should be satisfied as a matter of fact that the development is appropriate given the existing surrounding development comprises a variety of built forms of similar FSR and the proposed variation to the floor space ratio will not result in any unreasonable impact to the streetscape and the amenity of neighbouring properties.

This decision confirmed that the written request under clause 4.6 must satisfy the relevant tests that demonstrates each of the outcomes as being:

- The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- There are sufficient environmental planning grounds to justify contravening the development standard.

These matters have been addressed in the body of this submission. There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation. Relevant decisions include:

- *Written Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

Precondition 1 - Consistency with zone objectives

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

- *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

It is considered that the proposed development will meet the objectives of the clause for the following reasons:

The proposal seeks to provide for a detached dual occupancy that will be ultimately subdivided. This form of development is permissible on site. The resultant development comprises two detached dwellings that retain the low-density residential environment.

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 floor space ratio, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

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

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

Comments

The proposal provides for an appropriate bulk and scale. The proposal is of similar bulk to the existing surrounding development. It is considered that the proposal provides for a well-articulated and modulated building form which minimises bulk and will improve the presentation to the streetscape. In addition, the landscaping proposed as part of the application will further reduce bulk. There is a variety of development within Alan Avenue, including a variety of allotment sizes and shapes. The resultant dwellings are considered to be compatible with the existing bulk and scale of the surrounding development and desired character. It is considered that the proposal is consistent with Objective 1(a).

The subject site does not comprise any significant vegetation, but has been designed to protect and retain existing trees on the front of the site, within the Council road reserve and to the adjoining property. The proposal provides for detailed landscaping of the site including, the provision of 5 trees. The proposed development will not obscure important landscape or townscape features and is consistent with Objective 1(b).

The proposed development has been designed to ensure an appropriate visual relationship with the adjoining development and existing landscape character. The proposal provides for appropriate setbacks and articulation of the side elevations including courtyard areas. This enables landscaping within the side setbacks including screen planting. Further the proposal incorporates vegetation within the front and rear setbacks including 5 trees. As noted above the proposal ensures retention of the street tree and tree within the front setback which will maintain the existing landscaped character. The proposal is consistent with Objective 1(c).

The proposal will not have any unreasonable detrimental impacts on the use or enjoyment of adjoining land and the public domain. In terms of the adjoining residential zoned land, the proposal provides for appropriate side setbacks and considered location of rooms. All high use living areas are located on the ground floor level, with rooms generally orientated to the front or rear of the site. Landscaping is incorporated to assist with any perceived privacy issue. The proposal maintains reasonable solar to the adjoining properties. The proposal will not have any impact on the use of the adjoining public domain. The proposal achieves Objective 1(d).

Objective 1(e) is not applicable.

For the reasons stated above the proposal is consistent with the objectives of Clause 4.4 of the Manly LEP.

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 a new attached dual occupancy without detrimental impact on the adjoining properties or public domain and is consistent with the objectives of the relevant Clause.

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.45:1.

It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:

- The proposed works are compatible with the existing bulk and scale of residential development in the area and the character of the locality.
- The resultant development will present as two detached dwellings which is compatible with the existing streetscape.
- Reducing floor area to comply would not serve any benefit and would like not be discernible from the public domain. It is likely that such floor area would be removed from the rear which would not serve a benefit.
- The proposal 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 4.4 provide a maximum floor space ratio of 0.5:1 for the subject development.

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

- The proposed development is designed to respect the streetscape and the amenity of the adjoining properties. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works where they are not compliant with Council's floor space ratio 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 floor space ratio.

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 27 Alan Avenue, Seaforth, 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 existing surrounding development comprises a variety of built forms of similar FSR.
- The variation to the floor space ratio 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: -

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.

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.

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).

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.

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.

7.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed development providing a maximum floor space of 0.5:1.

This objection to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

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

Natalie Nolan
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APPENDIX B – LOCALITY ANALYSIS

The Alan Avenue locality is characterised by a mix of single and two storey dwellings located on a variety of allotment shapes and sizes.

The roof form in this area is predominantly traditional pitched with more recent styles emerging incorporating flat and low pitched roof forms. Dwellings are constructed of brick/rendered brick and tile with some clad dwellings/additions.

Fencing comprises a variety of styles including picket style fencing and solid masonry fencing.

The proposed development has been designed to complement the existing locality. The proposal provides for a new detached dual occupancy. 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.