



**107 Griffiths Street, Balgowlah**

**Demolition of existing dwelling house and construction  
of an attached dual occupancy and subdivision into  
two allotments**

**Statement of Environmental Effects  
For Northern Beaches Council**

**Prepared by Geoff Goodyer  
April 2019**

**Project No. 18-161**

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## **1. Executive summary**

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- 1.1. The proposal is to demolish the existing dwelling house and construct an attached dual occupancy and to subdivide the land into two allotments.
- 1.2. The dual occupancy is designed as two side-by-side dwellings, with living areas on the ground floor and three bedrooms on the first floor. A carport is provided for each dwelling with access from Griffiths Street. The area around the building will be landscaped.
- 1.3. The proposed allotments will each have an area of 247.2m<sup>2</sup>.
- 1.4. The proposal has been assessed under the relevant planning controls, in particular *Manly Local Environmental Plan 2013* and *Manly Development Control Plan 2013*. The proposal satisfies the aim and objectives of all provisions within those planning controls.
- 1.5. The dual occupancy will complement the character of the area and maintain the amenity of neighbouring dwellings and the proposal is considered to be suitable for approval.

## **2. Introduction**

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- 2.1. This Statement of Environmental Effects has been prepared by Geoff Goodyer of Symons Goodyer Pty Limited, Balgowlah. My professional details are included in Appendix A of this Statement of Environmental Effects.
- 2.2. I am a town planner with over 30 years' experience in local government and private practice. I am a Registered Planner accredited by the Planning Institute of Australia.
- 2.3. This Statement of Environmental Effects assesses the impacts of a proposal to demolish the existing dwelling house and construct an attached dual occupancy at 107 Griffiths Street, Balgowlah, under section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- 2.4. In the course of preparing this Statement of Environmental Effects I have:
- inspected the site and surrounding locality;
  - taken photographs of the site and surrounding locality; and
  - reviewed relevant environmental planning instruments and Council policies, in particular *Manly Local Environmental Plan 2013* and *Manly Development Control Plan 2013*.

### **3. Pre-lodgement liaison with Council**

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- 3.1. The applicant held a formal pre-lodgement meeting with Council's planners on 23 August 2018.
- 3.2. The feedback was generally supportive of the proposal but requested a redesign to increase the setbacks to the northern boundary and to provide two car parking spaces. The proposal has been redesigned in accordance with the feedback from Council's planners.

#### 4. Description of proposal

- 4.1. The proposal is to demolish the existing dwelling house and construct an attached dual occupancy at 107 Griffiths Street, Balgowlah.
- 4.2. Demolition works include the removal of the existing house and the existing garage. Seven existing exempt trees will be removed.
- 4.3. The proposed dual occupancy provides two dwellings in a side-by-side configuration. The dwellings are oriented north-south on the land.
- 4.4. On the ground floor each dwelling provides a kitchen / living / dining / sitting room, a laundry and a w.c. A terrace is provided adjoining the living area and a deck is provided with a northerly aspect adjoining the sitting room.
- 4.5. On the first floor each dwelling provides three bedrooms, one with ensuite and walk-in-robe, and a bathroom.
- 4.6. Car parking for each dwelling comprises a single carport with access from Griffiths Street.
- 4.7. The area around the buildings will be landscaped.
- 4.8. The land is proposed to be subdivided so that each dwelling is located on its own allotment. Each lot has an area of 247.2m<sup>2</sup>, a width of 6.76 metres and a depth of 36.575 metres.
- 4.9. The proposal is shown on the following plans:

No.	Rev.	Title	Drawn by
DA1003		Site plan	Rapid Plans
DA1004		Subdivision plan	Rapid Plans
DA1005		Existing ground floor plan	Rapid Plans
DA1006		Demolition ground floor plan	Rapid Plans
DA1007		Excavation and fill plan	Rapid Plans
DA1008		Existing landscaped open space plan	Rapid Plans
DA1009		Proposed landscaped open space plan	Rapid Plans
DA1010		Landscape plan	Rapid Plans
DA1011		Sediment and erosion control plan	Rapid Plans
DA1012		Waste management plan	Rapid Plans
DA1013		Stormwater plan	Rapid Plans
DA2001		Ground floor plan	Rapid Plans
DA2002		Ground FSR	Rapid Plans
DA2003		First floor plan	Rapid Plans
DA2004		First floor FSR	Rapid Plans
DA2005		Roof plan	Rapid Plans
DA3001		Sections – section 1	Rapid Plans
DA3002		Sections – section 2 and section 3	Rapid Plans
DA3003		Sections – garage and driveway plan	Rapid Plans
DA4001		Elevations – east, north	Rapid Plans
DA4002		Elevations – west, south	Rapid Plans

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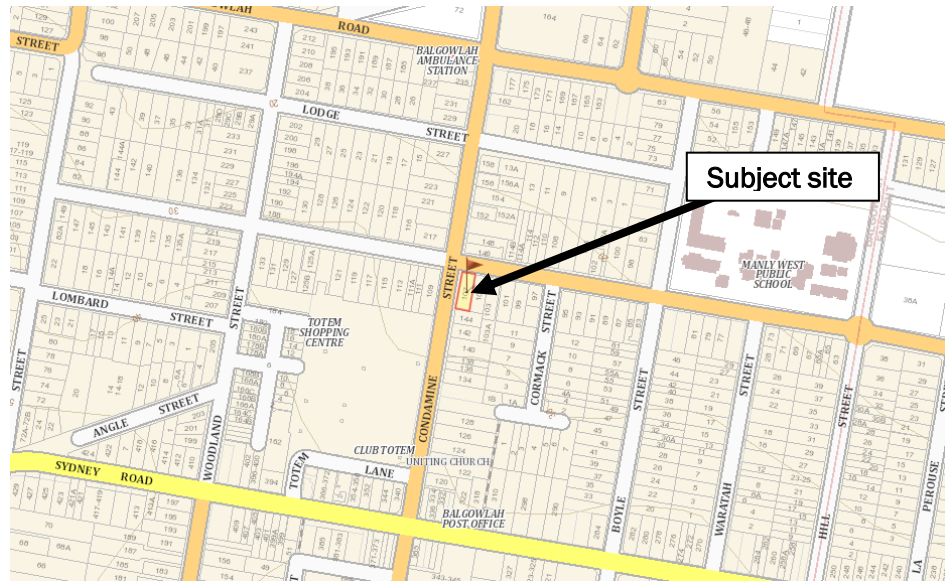
No.	Rev.	Title	Drawn by
DA4003		Elevations – front fence	Rapid Plans
DA5001		Perspectives	Rapid Plans
DA5002		Material and colour sample board	Rapid Plans
DA5003		June 21 <sup>st</sup> shadow – 9am	Rapid Plans
DA5004		June 21 <sup>st</sup> shadow – 12pm	Rapid Plans
DA5005		June 21 <sup>st</sup> shadow – 3pm	Rapid Plans
DA5006		Wall elevation shadow	Rapid Plans
DA5007		BASIX sheet 1	Rapid Plans
182597-1		Plan of proposed subdivision	TSS Surveyors
161552	B	Detail survey	TSS Surveyors

4.10. The proposal is accompanied by the following reports:

Title	Date	Prepared by
BASIX Certificate No. 981336M	6.2.2019	Paulc & Associates
NatHERS Certificate No. A65D489EW8	6.2.2019	Paul & c Associates
NatHERS Certificate No. XZ6N6WOB0K	6.2.2019	Paul & c Associates
Statement of Environmental Effects	April 2019	Symons Goodyer
Stormwater Drainage Management Letter	5.4.2019	Michal Korecky
Waste Management Plan		

## 5. Locality analysis

- 5.1. The subject site is Lot C, DP 302957, known as No. 107 Griffiths Street, Balgowlah. It is located on the south-eastern corner of Griffiths Street and Condamine Street. The site's location is shown on the following maps:



Map 1 – Location (source: sixmaps)



Map 2 – Aerial photograph (source: sixmaps)

- 5.2. The site is rectangular in shape. It has a frontage of 13.51m to Griffiths Street to the north, a frontage of 36.577m to Condamine Street to the west, a southern boundary of 13.51m and an eastern boundary of 36.576m.
- 5.3. The site area is 494.1m<sup>2</sup>.



- 5.4. The land slopes from its southern boundary down to its northern boundary. The total fall is 3.05m, representing an average grade of 1 in 12.0 (8.3% or 4.8°).
- 5.5. The site is occupied by a single-storey dwelling house of rendered brick construction with a tiled roof. The area around the building is landscaped.
- 5.6. Adjoining the site to the south is a 2-storey duplex. Adjoining the site to the east is a 2-storey dwelling house.
- 5.7. The surrounding area is characterised by a mix of residential buildings including dwelling houses, duplexes, terrace houses, and residential flat buildings. 100m to the south of the site on the opposite side of Condamine is the Totem shopping centre and residential village.
- 5.8. The site is well serviced by public transport with bus stops directly across the road and is within walking distance of schools and public open space.
- 5.9. The following photographs show the site and surrounding area:



**Photo 1:**

The subject site, 107 Griffiths Street, viewed from Griffiths Street.



**Photo 2:**  
The subject site, 107 Griffiths Street, viewed from Condamine Street.



**Photo 3:**  
The neighbouring duplex to the south of the subject site, 144 Condamine Street.





**Photo 4:**  
The neighbouring dwelling house adjoining the site to the east, 105 Griffiths Street.



**Photo 5:**  
Existing development on the opposite side of Griffiths Street.



**Photo 6:**  
Existing development on the opposite side of Condamine Street.

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## 6. Manly LEP 2013

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### 6.1. Aims of MLEP 2013

- 6.1.1. The proposal is considered to be consistent with the aims stated in clause 1.2 of MLEP 2013. In particular, the proposal maintains the diverse range of housing opportunities and choices in the locality, provides high quality landscaped areas, increases the existing housing density on the site, protects the natural environment and satisfies standards for energy conservation and water management.

### 6.2. Zoning, permissibility, and zone objectives

- 6.2.1. The land is zoned R1 General Residential. Attached dual occupancies are permissible with consent in the zone.
- 6.2.2. The proposal is considered to be consistent with the relevant objectives of the zone in that it provides for the housing needs of the community and contributes to the variety of housing types and densities.

### 6.3. Compliance Table

	Required	Proposed	Complies
<b>Subdivision lot size</b>	250m <sup>2</sup> minimum	247.2m <sup>2</sup>	No
<b>Building height</b>	8.5 metres maximum	7.6 metres	Yes
<b>Floor space ratio</b>	0.6:1 (296.46m <sup>2</sup> ) maximum	0.6:1 (296.1m <sup>2</sup> )	Yes

- 6.3.1. As detailed in the table above, the proposal complies with the building height and floor space ratio development standards in MLEP 2013.
- 6.3.2. The proposed subdivision results in a minor (1.1%) variation to the minimum subdivision lot size standard in clause 4.1 of MLEP 2013. A request to vary the development standard is attached as Appendix B. For the reasons detailed in the clause 4.6 variation request the proposal is considered to satisfy the objectives of the standard and the R1 General Residential zone and there are sufficient environmental planning grounds to justify the proposed variation.

### 6.4. Building height

- 6.4.1. The proposal complies comfortably with the building height control and achieves the objectives of the control listed in clause 4.3(1) of MLEP 2013:
- ✓ The building height is consistent with neighbouring and nearby development which is predominantly 2-storeys in height.
  - ✓ The scale is reasonable relatively to neighbouring development and the building facades are modulated to break up building bulk.

- ✓ Views to and from public and private spaces are maintained.
- ✓ Reasonable solar access is maintained to all neighbouring properties and complies with the requirements of the MDCP 2013.

## **6.5. Floor space ratio**

- 6.5.1. The proposal complies with the floor space ratio control and achieves the objectives of control listed in clause 4.4(1) of MLEP 2013:
- ✓ The bulk and scale of the building is consistent with neighbouring and nearby development which is predominantly 2-storeys in height.
  - ✓ The proposal does not obscure any landscape or townscape features.
  - ✓ The proposal maintains an appropriate relationship with the neighbouring 2-storey development.
  - ✓ The proposal does not result in any adverse environmental impacts on adjoining land or the public domain.

## **6.6. Miscellaneous provisions**

- 6.6.1. The site is not within the coastal zone (clause 5.5).
- 6.6.2. The site does not contain a heritage item, is not in the vicinity of any heritage items and is not within a heritage conservation area (clause 5.10).

## **6.7. Additional provisions**

- 6.7.1. The site is within an area identified on the Acid Sulphate Soils Map as being Class 5. The proposal involves minimal excavation and will not lower the water table on any other land. No further consideration is required with regards to acid sulfate pollution under clause 6.1 of MLEP 2013.
- 6.7.2. Minimal earthworks are proposed (clause 6.2).
- 6.7.3. The site is not a flood control lot. The site is not identified in the Draft Manly To Seaforth Flood Study as being subject to flooding (it is outside the catchment area that is studied in that report). No further consideration is required under clause 6.3(3) of MLEP 2013.
- 6.7.4. Stormwater will be disposed of in accordance with Drawing No. DA1013 (clause 6.4).
- 6.7.5. The site is not identified as affected on the Terrestrial Biodiversity Map (clauses 6.5, 6.6 and 6.7).
- 6.7.6. The site is not identified as being at risk on the Landslide Risk Map (clause 6.8).

- 6.7.7. The site is not located within a Foreshore Scenic Protection Area (clause 6.9).
- 6.7.8. The site is not within the foreshore area (clause 6.10).
- 6.7.9. The site is connected to all essential services (clause 6.12).

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## 7. Manly DCP 2013

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### 7.1. Part 3 – General Principles of Development

Issue	Consistent with principle	Inconsistent with principle
Streetscape	✓	
Heritage	✓	
Landscaping	✓	
Sunlight access and overshadowing	✓	
Privacy and security	✓	
Maintenance of views	✓	
Sustainability	✓	

#### 7.1.1. Streetscape

The proposal complements the streetscape. The height and bulk is consistent with what would be expected under the relevant planning controls and with the surrounding development.

#### 7.1.2. Sunlight access and overshadowing

Shadow diagrams have been prepared that demonstrate that reasonable levels of solar access will be maintained to the neighbouring properties in accordance with the requirements of the MDCP 2013.

With regards to sunlight to living room windows, the internal layout of the neighbouring property to the east is unknown so living room windows have not been identified. However, the shadow diagrams demonstrate no affectation at 9am and 12pm in midwinter, with the shadow falling on the neighbour's side-facing windows at approximately 1pm, retaining 4 hours of sunlight. It is noted that the shifting of the building away from the southern boundary as recommended by Council at the pre-DA meeting has resulted in additional overshadowing of these windows.

The shadow diagrams demonstrate no overshadowing of the neighbour's private open space at 9am and 12pm in midwinter. At 3pm approximately 31.1m<sup>2</sup> of sunlight is retained to the private open space, representing 48% of the existing sunlit area of the rear yard. This is a minor variation to the requirement to retain 2/3 of the sunlit area but is considered reasonable in circumstances where there is nil affectation at 9am and 12pm.

#### 7.1.3. Privacy and security

The proposal has been designed to maintain privacy between dwellings. On the ground floor level the side and rear boundary fences will prevent overlooking of neighbouring properties.

On the first floor level windows facing the eastern side boundary are limited to low daytime use rooms: bedrooms, ensuite and bathroom. To ensure potential overlooking is mitigated these windows are provided with high sills (1.5m above finished floor level). One window is provided in the stairway,

which is a transitional space that does not give rise to unacceptable levels of overlooking.

The 8.7m rear setback mitigates potential overlooking impacts from the upper level south-facing windows.

West-facing and north-facing windows look over the streets and provide casual surveillance, improving public safety.

#### 7.1.4. Maintenance of views

The proposal is consistent with view sharing principles established by the Land and Environment Court and adopted in the Manly DCP 2013. The proposal will have no impact on public or private views.

#### 7.1.5. Sustainability

A BASIX Certificate has been provided demonstrating that the proposal achieves the energy and water saving goals established by the State Government. Natural cross-ventilation is provided which will reduce reliance on air conditioning and the living areas have good access to daylight.

## 7.2. Part 4 – Development Controls

Control	Required / Permitted	Proposed	Complies?
Residential density – Area D3	1 dwelling per 250 m <sup>2</sup>	1 dwelling per 247.2m <sup>2</sup>	NO
Wall height	- East 7.0m - West 6.8m	- East 6.1m - West 6.3m	YES YES
Number of storeys	2	2	YES
Roof allowance	2.5m over wall height	1.2m	YES
Front Setback	6.0m or prevailing / established front setback	10.2m Consistent with streetscape	YES
Side setback	- East ground 1.1m - East first 2.3m - West ground 1.1m - West first 2.3m	- East ground 1.1m - East first 2.4m - West ground 1.1m - West first 2.4m	YES YES YES YES
Side setback of windows to habitable rooms	- East 3m	- East 1.1m – 2.4m	NO
Rear setback	8.0m	8.7m	YES
Open Space (OS3)			
- Total	55% site area (271.8m <sup>2</sup> )	39.3% site area (194.0m <sup>2</sup> )	NO
- Soft	19.25% site area (95.1m <sup>2</sup> )	23.9% site area (118.0m <sup>2</sup> )	YES
- Above ground	Maximum 40% of Total OS	0% of Total OS (0m <sup>2</sup> )	YES
Number of endemic trees	1	2	YES
Private open space	- East dwelling - 18 m <sup>2</sup> - West dwelling - 18 m <sup>2</sup>	- East dwelling - 58 m <sup>2</sup> - West dwelling - 58 m <sup>2</sup>	YES YES
Car parking	4 spaces	2 spaces	NO
Cut and fill	1.0m maximum	< 1.0m	YES

#### 7.2.1. Residential density



The proposal results in a minimal breach of the residential density control of 2.8m<sup>2</sup> per dwelling, or 1.12%.

Notwithstanding this minor breach the proposal satisfies the objectives of the control:

- ✓ It adds to the variety of dwelling types, allotment sizes and residential environments in Manly.
- ✓ There is minimal impact on existing vegetation. In accordance with advice received at the pre-lodgement meeting with Council planners, the removal of the existing palm trees is supported to enable a compliant rear setback to be provided. Subject to standard erosion and sedimentation controls during construction there will be no impact on waterways or riparian land. Minimal change is proposed to the topography of the land.
- ✓ The proposal provides an excellent level of internal amenity whilst contributing to housing diversity and the variety of dwelling sizes in the area.
- ✓ The proposal maintains the character of the locality and streetscape.
- ✓ The proposal maximises the use of existing infrastructure.

#### 7.2.2. Wall height

The proposal complies comfortably with the wall height control.

#### 7.2.3. Front boundary setbacks

The proposal provides a front setback of 10.2m to Griffiths Avenue. An upper level balcony projects 1.5m into the front setback as permitted by clause 4.1.4.1(d) of the MDCP 2013. The front setback is consistent with the streetscape and greater than the minimum 6.0m required by clause 4.1.4.1(b) of the MDCP 2013.

The setback to Condamine Street is treated as a secondary street frontage and subject to clause 4.1.4.2(d) of the MDCP 2013 and is discussed below.

The location of the carports on a nil setback to Griffiths Avenue is subject to clause 4.1.6.1(b) of the MDCP 2013 and is discussed below.

#### 7.2.4. Side boundary setbacks

The proposal complies with the side setback requirements of Part 4.1.4.2 of the MDCP 2013. In this regard the building steps in at the upper level and provides two wall planes, with the lower wall plane set back a minimum of 1/3 of its wall height and the upper wall plane set in 1/3 of its wall height.

There are projections into the side boundary setback area, being the upper part of the stairwell. In accordance with clause 4.1.4.2(b) of the MDCP

2013, this element has no adverse impact on adjoining the adjoining properties. It does not result in any overlooking or noise impacts.

Entry porches are proposed on the side boundaries, as permitted by clause 4.1.4.3 of the MDCP 2013. The porches are less than 3m in height and constitute less than 35% of the site boundary. They are lightweight structures for easy maintenance and replacement in the future.

There are a number of windows located within 3m of the side boundary. On the western side these overlook the street, providing casual surveillance and improving public safety. On the eastern side the ground floor windows are screened from the neighbouring dwelling house by the side boundary fences and the upper floor windows are to low usage areas (bedrooms, ensuite and bathroom) and have high window sills (1.5m above finished floor level) mitigating the impacts of overlooking. The stairwell window on the eastern façade provides light to a transitional area that will not result in significant privacy impacts.

7.2.5. Rear boundary setback

In accordance with advice received at the pre-lodgement meeting, the building has been relocated away from the southern boundary to provide a compliant rear boundary setback.

7.2.6. Open space

The proposal complies comfortably with the requirements of the MDCP 2013 with regards to soft landscaping and private open space.

Soft landscaping equivalent to 23.9% of the site area is provided, where a minimum of 19.25% is required. The areas provided for soft landscaping are well proportioned and provide areas for the planting of trees and shrubs that will soften the appearance of the development.

The private open space is located appurtenant to the internal living areas and provides a choice to the future residents to use the rear courtyard or the front terrace.

The total open space area does not comply with the minimum required area. A total of 55.0% of the site area is required for open space whereas 39.3% is proposed. This excludes areas with a dimension of less than 3 metres. Notwithstanding this non-compliance, the proposal achieves the objectives of the control:

- ✓ There are no important landscape features or vegetation on the site. Council's pre-lodgement advice was that the existing palms trees were not of sufficient value to justify retention. They are exempt species under Council's Tree Preservation Order.
- ✓ Soft landscaped areas exceed the minimum requirements of the MDCP 2013.

- ✓ The proposal provides for excellent internal amenity whilst maintaining the amenity of neighbouring dwellings, as described in this Statement of Environmental Effects.
- ✓ The proposal will not lead to the spread of weeds.
- ✓ Soft landscaped areas are proposed that will provide for wildlife habitat.

7.2.7. Parking design and location of carports

The proposal includes a single carport for each dwelling located adjacent to the front property boundary, as permitted by clause 4.1.6.1(b) of the MDCP 2013. The width of each carport is less than 6.2m, as required by clause 4.1.6.1(c) but they take up slightly more than 50% of the street frontage (51.9%). There are no suitable alternatives for providing car parking on the site due to traffic hazards in Condamine Street and the negative streetscape and sustainability impacts of providing basement car parking.

In accordance with clause 4.1.6.1(d) of the MDCP 2013, only one car space is provided for each dwelling to minimise impacts on the streetscape.

## **8. Manly Section 94 Contributions Plan**

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- 8.1. The proposal requires a contribution under the Manly Section 94 Contribution Plan. Contributions are capped at \$20,000 per **additional** dwelling under the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*, issued by the Minister for Planning and Infrastructure on 21 August 2012. Consequently, a total contribution of \$20,000 is payable.

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## **9. State Environmental Planning Policies**

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### **9.1. SEPP No. 55 - Remediation of land**

- 9.1.1. Clause 7 of SEPP 55 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.
- 9.1.2. The site has been used for residential purposes for approximately 80 years prior to which it was probably vacant.
- 9.1.3. The historical uses of the site are not listed in Table 1 to the Planning Guidelines under SEPP 55 as being activities likely to cause contamination. It is considered unlikely that the site has experienced any contamination, and no further assessment is considered necessary.

### **9.2. SEPP (Infrastructure) 2007**

- 9.2.1. Clause 45 of SEPP Infrastructure requires the Consent Authority to notify the electricity supply authority of any development application (or an application for modification of consent) for any development proposal:
  - within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists),
  - immediately adjacent to an electricity substation,
  - within 5m of an overhead power line
  - that includes installation of a swimming pool any part of which is within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line
- 9.2.2. It is understood that the proposal will be referred to the electricity supply authority in accordance with Council's usual practice.

### **9.3. SEPP (Building Sustainability Index) 2004**

- 9.3.1. Under clauses 8 and 9 of SEPP BASIX, other planning instruments and DCP's do not apply to BASIX commitments.
- 9.3.2. A BASIX Certificate accompanies the proposal.

### **9.4. SEPP (Vegetation in Non-Rural Areas) 2017**

- 9.4.1. Under clause 10 of SEPP (Vegetation in Non-Rural Areas) 2017, Council may issue a permit to clear vegetation in any non-rural area of the State. The proposal involves the removal of five phoenix palm trees and two other trees which are located within the building platform. All of the trees proposed to be removed are exempt species under the Council's Tree Preservation Order.

## **10. Environmental Planning and Assessment Regulation 2000**

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### **10.1. Demolition**

- 10.1.1. The proposal involves demolition of the existing dwelling house. Under Clause 92(1)(b) of the *Environmental Planning and Assessment Regulation 2000* Council must consider the provisions of Australian Standard AS 2601: The demolition of structures ("AS 2601").
- 10.1.2. All demolition works will be carried out in accordance with AS 2601, including the preparation of an appropriate Work Plan. This matter may be addressed by a condition of consent.

## **11. Other matters under Section 4.15 of the Environmental Planning & Assessment Act 1979**

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### **11.1. The likely impacts of the development**

11.1.1. These have been addressed above.

### **11.2. The suitability of the site**

11.2.1. The site is considered to be suitable for dual occupancy development and is zoned for residential purposes. It does not contain any particular environmental features and does not have a history that would indicate any land contamination.

11.2.2. The site is not identified as bush fire prone land and is not subject to other natural hazards such as flooding or landslip.

11.2.3. The site is located within walking distance of shops, services, public transport, schools and public open space, making it very suitable for residential development.

### **11.3. Submissions**

11.3.1. The proposal will require notification to neighbouring and nearby landowners in accordance with Part 2 of the MDCP 2013 and any submissions received will require consideration by Council.

### **11.4. The public interest**

11.4.1. The public interest is served by developing the land in an efficient and economic way that maintains the character of the area and the amenity of the neighbourhood. The Council's planning controls encourage such development in this locality.

## **12. Summary**

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- 12.1. The merits of this application have been identified in this assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *Manly Local Environmental Plan 2013* and the *Manly Development Control Plan 2013*.
- 12.2. The proposed development will enhance the housing stock and diversity of housing choice in the locality. It makes efficient use of existing infrastructure. It will provide excellent amenity for the future residents of the development. The building is consistent with the character of the locality and will maintain the streetscape.
- 12.3. The proposal achieves the objectives of Council's development controls and strategic aims and is considered to be suitable for approval on town planning grounds.



## **Appendix A – Details of the author**

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### **ACADEMIC QUALIFICATIONS**

Bachelor of Town Planning (Honours), University of New South Wales (1988).  
Master of Professional Accounting (Distinction), University of Southern Queensland (1999).

### **PROFESSIONAL EXPERIENCE**

#### **1997 to present                      SYMONS GOODYER PTY LTD**

Principal town planning consultant responsible for providing expert town planning advice to a diverse range of clients.

Expert witness in the Land and Environment Court.

Statutory and strategic projects within numerous Council areas, including Ashfield, Bankstown, Canterbury, Hornsby, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Mosman, North Sydney, Pittwater, Randwick, Rockdale, Sutherland, Warringah, Waverley, and Woollahra.

#### **1988 to 1997      WARRINGAH COUNCIL**

Manager, Planning and Urban Design Branch (1994-7). Responsible for drafting of operative provisions of the Warringah Local Environmental Plan 2000.  
Senior Strategic Planner (1993-1994)  
Development Assessment Officer (1988-1993)

#### **1986 to 1988      MARRICKVILLE MUNICIPAL COUNCIL**

Town Planner

#### **1986                      EDWARDS MADIGAN TORZILLO BRIGGS INTERNATIONAL PTY LTD**

Town Planner

#### **1984                      RYDE MUNICIPAL COUNCIL**

Student Town Planner

### **PUBLICATIONS**

Goodyer, G (1988)  
Retail and office activities in industrial areas in the Sydney region. University of New South Wales.

Goodyer, G (1989)  
Hi-tech industry. Planning Law and Practice, UNSW, 1989.

Goodyer, G (1995)  
Modern Planning Instruments. Health and Building Surveyors' Association (NSW) Conference, 1995.

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## Appendix B – Clause 4.6 variation request: Minimum subdivision lot size

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Address: 107 Griffiths Street, Balgowlah

Proposal: Demolition of an existing dwelling house and construction of an attached dual occupancy and subdivision into two allotments.

### 1. Manly Local Environmental Plan 2013 (“MLEP”)

#### 1.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning provide that the subject site is zoned R1 – General Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP specifies the following objectives for the R1 zone:

- \* *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.*

The proposed development is for the purpose of a dual occupancy (attached) which is a permissible use in the R1 zone.

#### 1.2 Clause 4.1 – Minimum subdivision lot size

Clause 4.1 of MLEP sets out the minimum subdivision lot size development standard as follows:

(1) *The objectives of this clause are as follows:*

- (a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) *to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) *to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) *to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

(2) *This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*
- (3A) *If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.*
- (4) *This clause does not apply in relation to the subdivision of any land:*
  - (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
  - (b) *by any kind of subdivision under the Community Land Development Act 1989.*

The Lot Size Map specifies a minimum subdivision lot size for the land is 250 m<sup>2</sup>.

#### 1.4 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a*

*development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.1 (the minimum subdivision lot size development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the minimum subdivision lot size development standard pursuant to clause 4.1 of MLEP which specifies an minimum subdivision lot size of 250m<sup>2</sup> however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in

the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition of satisfaction requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and may assume the concurrence of the Secretary under cl 4.6(4)(b). Nevertheless, the Council should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision on land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living. The site is not within any of those zones to clause 4.6(6) is not relevant to the development.

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.1 of MLEP from the operation of clause 4.6.

## **2. The Nature and Extent of the Variation**

- 2.1 This request seeks a variation to the minimum subdivision lot size development standard contained in clause 4.1 of MLEP.

- 2.2 Clause 4.1(3) of MLEP specifies a minimum subdivision lot size on the subject site of 250m<sup>2</sup>.
- 2.3 The proposed subdivision will result in two allotments each with a lot size of 247.2m<sup>2</sup>. The non-compliance equates to 2.8m<sup>2</sup> for each allotment, representing a variation of 1.12%.

### 3. Relevant Caselaw

- 3.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29] as follows:

- 13. *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- 14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*
- 15. *The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*
- 16. *As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the*



development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

25. *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*
26. *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*
27. *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*



28. *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*
29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].*

3.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.1 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the E3 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.1 of MLEP?

#### **4. Request for Variation**

##### **4.1 Is clause 4.1 of MLEP a development standards?**

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

*“(a) the area, shape or frontage or any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point.”*

- (b) Clause 4.1 of MLEP relates to the area of any land and accordingly clause 4.1 is a development standard.

#### **4.2 Is compliance with clause 4.1 unreasonable or unnecessary?**

- (a) This request relies upon the 1<sup>st</sup> way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the minimum subdivision lot size standard and reasoning why compliance is unreasonable or unnecessary is set out below:
- (a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

The pattern of subdivision in the vicinity of the site is characterised by rectangular shaped allotments or varying widths, interspersed by battle-axe allotments, as shown in the following map (source: sixmaps):



The proposed rectangular shaped allotments are consistent with the predominantly rectangular shaped lots in the vicinity of the site. The allotment width is similar to a number of nearby allotments, particular 111, 111A, 110, 112, 114 and 114A Griffiths Street. In this regard the proposed allotments are consistent with the subdivision pattern in the immediate vicinity of the site, which is considered to be similar to

the subdivision pattern in residential zones within the area that the MLEP applies to.

The proposed dwelling density is generally in keeping with that which is anticipated by the planning controls with a variation of one 1.12% on the development standard. It is further noted that the design of the proposal does not enable future intensification of the dwelling density through the provision of secondary dwellings. In this regard, for instance, a dwelling house with a secondary dwelling on a 300m<sup>2</sup> allotment would have a significantly higher dwelling density (1 / 150m<sup>2</sup>) than the proposed development (1 / 247.2m<sup>2</sup>).

The design of the proposal ensures that there is sufficient area for building and landscaping. In this regard, the proposal includes both the design and construction of the building and the subsequent subdivision into two allotments. This can be contrasted with a proposal for subdivision only where the final built form is unknown.

The land is relatively unconstrained, with a gentle slope to the street that facilitates stormwater drainage by gravity and direct vehicular access, and no environmental features that would constrain development. In these circumstances the land is suitable for development to the density that is proposed and each lot provides sufficient area for building and landscaping.

This objective is achieved.

- (b) *to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*

The proposal maintains the character of the locality and the streetscape. In this regard, the streetscape exhibits a diversity of housing types in the immediate locality, including dwelling houses, duplexes, terraces, residential flat buildings and, at Stockland Balgowlah less than 100m to the south of the site, high-rise shop top housing.

The two-storey scale of development is consistent with neighbouring and nearby development, where a two-storey built form predominates.

Proposed landscaping will soften the appearance of the building and enhance the streetscape and character of the area.

Discussion regarding subdivision patterns is included above in relation to objective (a).

This objective is achieved.

- (c) *to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*

This objective is achieved through the use of a variety of lot sizes prescribed by the Lot Size Map, ranging from one lot per 250m<sup>2</sup> up to one lot per 1150m<sup>2</sup>, with the smaller lot sizes in areas of least constraint and closest to shops, services, public transport and public open space, as well as reflecting the historic development patterns in the area. The subject site is within the area prescribing 1 lot per 250m<sup>2</sup>, indicating that it is less constrained by existing vegetation, topography, public views and natural features of land.

This objective is achieved.

- (d) *to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The subject site is in an excellent location with regards to access to public transport, with bus services available directly outside the site to Manly, the City and the Northern Beaches. It is within 5 minutes walking distance of local facilities and services at the Balgowlah Commercial Centre and Stockland Centre. It is connected to all necessary infrastructure such as water, electricity, gas and telephone.

This objective is achieved.

#### **4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”* (emphasis added)

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

The variation to the development standard does not reduce the amenity of other dwellings in the vicinity of the site or the public domain but results in the efficient and economic use of land in a location that is connected to all necessary infrastructure and in close proximity to shops, services, public transport and public open space.

The site can be differentiated from other sites in good proximity to public facilities because of the lack of constraints to development and the extremely minor variation to the development standard (1.12%) that is involved in the proposal.

Being a corner allotment enables the proposed dwellings to benefit from access to sunlight, natural ventilation and outlook that is not available to other allotments.

The absence of external impacts, the opportunity for excellent internal amenity of the dwellings, and the efficient and economic use of land that maximises the use of local infrastructure and minimises travel times and reliance on motor vehicles constitute sufficient environmental planning grounds to justify the proposed departure from the development standard.

**4.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.1 and the objectives of the R1 General Residential zone?**

- (a) Section 4.2 of this written requests demonstrates that the proposed development meets each of the applicable objectives of clause 4.1. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.
- (b) Each of the objectives of the R1 zone and the reasons why the proposed development is consistent with each objective is set out below:

- \* *To provide for the housing needs of the community.*

The proposal provides two well-designed dwellings with excellent amenity that will contribute to meeting the housing needs of the community.

- \* *To provide for a variety of housing types and densities.*

The proposed dwellings contribute to the variety of housing types available in the area and to the variety of densities of dwelling in the area, noting that the area is characterised by a variety of housing types and densities from single dwelling houses through to duplexes, dual occupancies, multi-dwelling house, walk up residential flat buildings and high-rise shop top housing.

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

This objective is not relevant to the proposal.

**4.5 Has council obtained the concurrence of the Director-General?**

Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation pursuant to the Assumed Concurrence notice issued on 21 February 2018.

**4.6 Has Council considered the matters in clause 4.6(5) of MLEP?**

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standards is reasonable and appropriate in the circumstances of the case.



Geoff Goodyer  
21 February 2019