

STATEMENT OF ENVIRONMENTAL EFFECTS

7 CLIFFORD AVENUE, FAIRLIGHT

**PROPOSED DWELLING ALTERATIONS AND ADDITIONS
AND NEW SWIMMING POOL**

**PREPARED ON BEHALF OF
Mr & Mrs Opadchy**



MARCH 2019

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1. INTRODUCTION

This application seeks approval for the construction of dwelling alterations and additions and a new swimming pool upon land at Lot B in DP 315261 which is known as **No. 7 Clifford Avenue, Fairlight**.

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

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

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

- Survey Plan prepared by True North Surveys, Ref No. 8732 and dated 23/11/18.
- Architectural Plans & Schedule of External Finishes prepared by Du Plessis + Du Plessis Architects, Issue C and dated 5/11/2018.
- BASIX Certificate No. A329994_2 issued 19 March 2019.
- Arboricultural Impact Assessment prepared by Plateau Tree Service Pty Ltd, Ref No. 94912 and dated 7/7/18.
- Photo Montage – View Analysis and Compliant DA Massing and Certification prepared by Deneb Design, Ref No. 1566 and dated 27.02.19.
- View Impact Study prepared by Deneb Design, Ref No. 1566 and dated 07/11/18.
- Landscape Plan prepared by Du Plessis + Du Plessis Architects, Drawing No. L.001, Issue C and dated 05/11/2018.
- Stormwater Management Plan and Sediment & Erosion Control Plan prepared by GZ Consulting Engineers Pty Ltd, Drawing No. DR-000, DR-001, SD-001, Revision 0 and dated 18/10/2018.
- Waste Management Plan prepared by Du Plessis + Du Plessis Architects and dated March 2019.

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

2. BACKGROUND

A Pre-Lodgement Meeting was held with Council on 30 January 2019 where a number of points were discussed:

Building Height: It was stated in this PLM notes that *'the proposal (up to 10.4m) is consistent with the building height of the neighbouring properties and will maintain the streetscape of the locality. A clause 4.6 application to vary the development standard must be submitted with the application. The variation to the development standard is supported subject to the submission of:*

- *A view loss assessment that demonstrates no unreasonable loss of views.*
- *Certified shadow diagrams that demonstrate no unreasonable overshadowing of private open spaces and windows to habitable rooms.'*

Comment: The plans have been modified and a substantial reduction in height (9.548m above existing ground level and 9.19m above natural ground level) has been achieved.

Garage/Street Façade: The Council noted that the eaves of the proposed garage were overhanging the boundary. This has been rectified in the current plans. The PLM notes provided:

Subject to the garage being contained entirely within the site the proposed garage is consistent with the streetscape, the objectives of Clause 3.1 Streetscape and Clause 4.1.6 Parking Vehicular Access and Loading (Including Bicycle Facilities). The proposed garage is supported by Council.

This issue has been addressed.

FSR

The proposed FSR complies and the Council supports this aspect.

Views

A detailed view loss assessment was required to be submitted as part of this application. This has been prepared and in summary provides that the non-compliance with the height controls does not result in a loss of views when compared to a development complying with Council's controls. Further the view loss is considered negligible.

Following the Pre-Lodgement Meeting further amendments were made (as discussed above) and these have been provided to Council via email. It was through these conversations that the plans were finalised. Some discussions during this time was also held about the pool height and as a result the pool has been lowered to address this concern.

3. SITE DESCRIPTION AND LOCALITY

The site is identified as Lot B in DP 315261 which is known as No. 7 Clifford Avenue, Fairlight. The site is located on the southern side of Clifford Avenue with a street frontage 11.43m. The site is rectangular in shape and has an area of 522.5m² with a depth of 45.72m. The locality is depicted in the following map:



Site Location Map

The site falls towards from the street frontage with levels of RL 25.37 towards the rear of the site with levels of RL 19.24 towards the rear boundary. A concrete retaining wall dissects the rear yard. The subject site currently comprises a two-storey painted brick dwelling with tiled roof. A metal carport is located forward of the dwelling with nil setback to the street frontage and adjacent to the western boundary. A rendered masonry wall with timber vehicular and pedestrian access gates is currently erected along the front boundary of the site.

The site is depicted in the following photographs:



View of Subject Site from Street

The existing surrounding development comprises a mix of single detached dwellings, semi attached dwellings and multi dwelling housing comprising of 1, 2 and three storeys. The existing surrounding development is depicted in the following aerial photograph:



Aerial Photograph of Locality

4. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for the construction of alterations to the existing dwelling and new swimming pool. The proposed additions will comprise a mixture of painted/rendered external masonry walls to the ground level with painted weatherboard clad walls to the first floor and a new pitched metal roof.

Alterations to the lower ground level are minimal and provide for some internal changes to the floor plan and a new outdoor BBQ and fire place to the existing terrace area.

At ground (entry) level, the proposal provides for a new garage to replace the existing carport. The garage is provided with nominal setback to both the front (north) and side (western) boundaries. A new replacement baywindow to the front façade of the dwelling is proposed to be setback between 2.975m and 3.45m to the street frontage. An addition to the rear southwest corner of this level will provide for additional floor area. This element is setback 900m from the western boundary which is consistent with the existing dwelling on site. A full height privacy screen will be provided on the new western elevation window to this addition. Some internal alterations are proposed at this level and a new lift will be provided to service all levels.

The proposal provides for a new first floor level to accommodate 4 bedrooms, bathrooms and a study. This level is generally provided with setbacks of 2.48m and 2.0m to the sites eastern and western side boundaries, respectively. There are some projections into these setbacks.

The proposal provides for a new swimming pool in the rear yard. The pool is provided with setbacks of 2.6m and 1.2m to the eastern and western boundaries as measured from the pool coping. The proposal provides for screen planting adjacent to the boundaries of the site. The pool has been provided at a lower level

All collected stormwater will discharge to an existing drainage easement as detailed in the Stormwater Management Plan prepared by GZ Consulting Engineers.

The proposal will result in the following numerical indices:

Site Area: 522.5m²

**Proposed Total Open Space: 296.5m² or 57%
(as defined)**

Proposed Soft Landscape: 108.5m² or 37% of req'd total open space

Proposed FSR: 312m² or 0.59:1

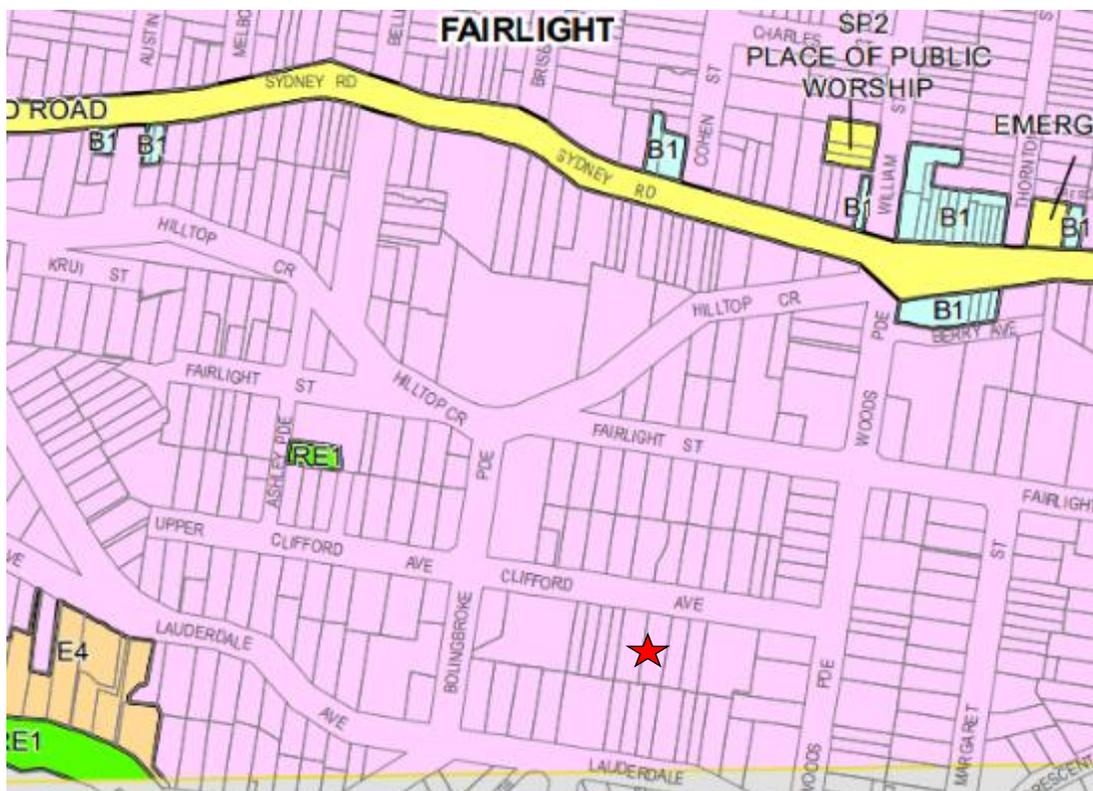
5 ZONING & DEVELOPMENT CONTROLS

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

5.1 Planning for Bushfire Protection 2006

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

5.2 Manly Local Environmental 2013



Extract of Zoning Map

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

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

It is considered that the proposed development achieves these objectives by:

- Ensuring the proposal compliments the existing streetscape and the existing surrounding properties.
- Retaining the existing amenity to the surrounding residences.
- Providing a development that is compatible in terms of bulk, scale and height to surrounding properties.

Single dwellings and associated structures are a permissible use in the R1 General Residential zone with the consent of Council. The following numerical standards are applicable to the proposed development:

Clause	Development Standard	Proposal	Compliance
Clause 4.3 Height of Buildings	8.5m	9.19m to natural ground level (9.548m to existing ground level)	Clause 4.6 Variation in Appendix 1
Clause 4.4 Floor Space Ratio	0.60:1	0.59:1	Yes

The following clauses also apply:

Clause 6.1 Acid Sulfate Soils

The subject site is not identified on Council's Acid Sulfate Soil map. No further information is required in this regard.

Clause 6.2 Earthworks

The proposal does not provide for any significant earthworks and no further information is required in this regard.

Clause 6.4 Stormwater Management

All collected stormwater will continue to discharge to the existing easement in accordance with Council controls and the Stormwater Management Plan prepared by GZ Consulting Engineers.

Clause 6.9 Foreshore Scenic Protection Area



Extract of Foreshore Protection Area Map

The subject site is identified on Council's Foreshore Scenic Protection Area Map and therefore the provisions of this clause apply. This clause requires the consent authority to have considered the following:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

The proposed development provides for additions to an existing dwelling. These additions will not be visible from the water or the foreshore given the ample setback of the site to the water. The development does not create any conflict between land and water based activities.

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

4.3 Manly Residential Development Control Plan 2013

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

Part 3

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

Clause 3.1.1 – Streetscape (Residential Areas)

The proposal provides for additions to an existing single storey dwelling and will not have a detrimental impact on the view of the site from the street. The proposed additions incorporate a new first floor level which will be compatible with the existing surrounding development this portion of Clifford Avenue. The resultant dwelling presents as two storey when viewed from Clifford Avenue. The presentation to the street will be improved through the removal of the existing solid high fence which is to be replaced with a low masonry wall with timber slats above. This will provide for a more open streetscape.

The intended outcomes are noted as:

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

It is considered that the proposal provides for additions to an existing dwelling that are compatible with the existing surrounding streetscape. The proposal provides for additions that present as two storey when viewed from the street with the new upper level providing for increased boundary setbacks. The dwelling is well articulated and complements the character of the locality. The non-compliance with the LEP height control is justified in the Clause 4.6 variation submitted with this application. The external finishes are complementary and harmonious with the existing surrounding development.

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

Clause 3.1.1.3 Roofs and Dormers

This clause provides:

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

The proposal provides for a conventional tiled pitched roof which is the predominant roof form in the locality.

Clause 3.3 - Landscaping

The proposal requires the removal of one tree protected by Council's Tree Preservation Order. This tree (T2) is located at the rear of the proposed additions near the boundary with the subject and adjoining site (No. 9 Clifford). An Arboricultural Impact Assessment has been prepared by Plateau Trees Pty and Ltd and has identified T2 has having a low landscape significance and not worthy of retention. The proposal provides for detailed Landscape Plan which provides for 2 new canopy trees which will achieve heights of in excess of 7m in the rear yard. The plan also provides for screen planting around the site.

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

The objectives of the clause are noted as:

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

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

- The proposal provides for additions to an existing single storey dwelling. The additions incorporate a first-floor level. The resultant height is compatible with the surrounding properties. See Clause 4.6 variation.
- The proposal has been designed to maintain privacy to the adjoining properties. This has been achieved by locating all high use living areas on the ground and lower level floors with the new first floor providing for only bedrooms, bathrooms and a study. The only windows on the upper level side elevations serve bathrooms or a staircase.

The upper level provides for a balcony, however this element is well setback from the eastern and western boundaries. Further this deck serves a bedroom which is a low usage room and is designed to maximum water views. The proposal incorporates a full height privacy screen along the western elevation of the new dining room window on the ground floor plan to prevent overlooking.

- Shadow diagrams have been prepared which indicate negligible additional shadowing to the adjoining properties. The allotment is orientated north-south which ensures that adjoining properties will receive at least 3 hours of solar access to private open space and living areas on the winter solstice.
- The proposal maintains ample area of landscaped open space for private open space and landscaping.

Clause 3.4.3 Maintenance of Views

The subject and surrounding properties enjoy views to the south towards North Harbour. It is considered that the proposal has had regard to the view sharing principles established by the Land & Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. A View Analysis which includes the analysis of the proposed additions and an analysis of a 'complying' (that is complying with Council LEP and DCP) development has been prepared by Deneb Design and forms part of the submission to Council. The properties assessed are No. 10 and No. 1/12 Clifford Avenue. An assessment of the views in accordance with view sharing principles is detailed below:

i. Assessment of views:

The subject and adjoining properties enjoy views to the south. Views include North Harbour and Dobroyd Head. These are considered to be significant views.

ii. Where are views obtained:

Residents obtain views to the south, generally over rear boundaries.

No. 10 Clifford Avenue comprises a four-level dwelling with lower level parking.

The dwelling essentially comprises:

- Level 1: bedrooms and bathrooms
- Level 2: family/games room
- Level 3: living, dining, kitchen and amenities
- Level 4: Master bedroom with ensuite

The water views from No. 10 Clifford Avenue are obtained from all levels of the dwelling. The views are obtained over the properties on the southern side of Clifford Avenue.

No. 1/12 Clifford Avenue enjoys views to the south and southeast over the properties on the southern side of Clifford Avenue. The main view is from the balcony.

iii. Extent of Impact:

10 Clifford Avenue

The View Analysis (both the proposed development and DA massing envelope) depict existing views and potential impact from all levels of the No. 10 Clifford Avenue and are summarised below:

Level 4 Master Bedroom – The proposed development does not obstruct any water/foreshore views from either a sitting or standing position.

Level 3 Main Living Area – On the deck on the front of this level the proposed development does not obstruct any water or foreshore views. Similarly, from the internal living areas of this level the proposal does not obstruct any water or foreshore views.

Level 2 Living/games – The proposed development will obstruct a small portion of the view of the water. There is no obstruction of Dobroyd Head or the land/water interface. It is noted that development complying with Council's height controls (as depicted in the DA massing analysis Sheet P06) the proposal would provide for a greater obstruction of views. In this regard the proposed design is a better outcome resulting in less view loss.

Level 1 Bedroom – The proposed development will obstruct the small water view from this level. It is noted that it is not the non-complying roof form that results in this view loss. As depicted in the DA Massing Analysis (Sheet P07) a development complying with the maximum building height and wall height control would result in a larger obstruction of views from this level.

1/12 Clifford Avenue

Page P07 of the View Analysis and page P08 of the View Analysis with DA massing envelope is relevant. P07 depicts the impact from the proposal whilst P08 depicts the impact from a development complying with Council's building/wall height and setback controls. In this regard the view impact from the proposed development and less than that of a development which complies with the Council's height and setback controls. Regardless the impact from the proposed development is minimal being only filtered views through vegetation and building, with the main views of North Harbour, Dobroyd Head and North/South Head being unaffected by the development.

iv. Reasonableness of Loss

It is our opinion that the proposal will maintain all views from the two upper levels of No. 10 Clifford Avenue which comprises the main living areas and the master bedroom. There is some view loss from the other living / games room (Level 2) however the view loss is not great and is less than the loss that would result with a development complying with both the building height and wall height controls of the LEP/DCP. As such it is noted that the non-compliance with the overall building height does not contribute to any loss of significant views.

In relation to No. 1/12 Clifford Avenue, the proposed development results in only minimal loss of filtered water views, with the main unobstructed views not affected by the proposal. Further a development complying with the maximum building/wall height controls would result in a greater loss of views.

In summary, the proposal provides for an appropriate development that has had regard to views of the surrounding properties and the planning principles established in *Tenacity Consulting v Warringah Council*.

Clause 3.5 - Sustainability

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

Clause 3.7 - Stormwater Management

It is proposed to connect all collected existing drainage easement as detailed in the Stormwater Management Plan prepared by GZ Consulting Engineers.

Part 4

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

Clause/ Design Element	DCP Requirement	Compliance/Comments
Residential Density & Subdivision	Density Area D3 – 1 dwelling per 250m ²	Yes Site area is 522.5m ² . There is no change to the density.
Floor Space Ratio	Refer to LEP 0.6 :1	Yes Proposal provides for a floor space of 312m ² or 0.59:1 which complies with this clause.
Wall Height	Height – 6.5m	Proposed wall height varies from 5.8m to 7.8m. This non-compliance does not result in any detrimental impact. The wall height is compatible with other development in the locality. The non-compliance does not result in any additional overshadowing. The non-compliance is only the as a result of the dormer windows which are not dominate in the streetscape or the adjoining properties.

Clause/ Design Element	DCP Requirement	Compliance/Comments
<p>Number of Storeys</p> <p>Roof Height</p> <p>Parapet Height: 600mm above wall height.</p> <p>Maximum Roof Pitch</p>	<p>Two Storeys</p> <p>2.5m above wall height</p> <p>600mm above wall height</p> <p>35°</p>	<p>The proposal presents as a two storey dwelling when viewed from the street. A small portion of the dwelling is three storeys. This is at the rear of the site and is a result of the previous excavation to create a lower level room. This is compatible with the existing surrounding development and does not result in any unreasonable impacts.</p> <p>Yes</p> <p>Not applicable</p> <p>Yes</p>
<p>Building Setbacks</p>	<p>Front Setback – Min. 6.0 metres or consistent with neighbouring.</p>	<p>The proposal provides for a new garage with a nil setback to the street frontage. This is considered appropriate for the following reasons:</p> <ul style="list-style-type: none"> • The deck replaces an existing carport with solid entry gate in the same location. • There is no option for parking behind the front building line given the site width and location of the existing dwelling. • The garage has been designed to be integrated into the dwelling design and complements the character of the dwelling. • The garage is compatible with other parking structures in this portion of Clifford Avenue. Several structures are depicted in the photos in Section 3 of this report.

Clause/ Design Element	DCP Requirement	Compliance/Comments
	<p>Side Setback – 1/3 of the height of wall.</p> <p>Walls without windows may be constructed to one side boundary only, providing the objectives of this part can be met and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.</p>	<ul style="list-style-type: none"> • The resultant dwelling will provide for a more open streetscape by replacing the existing solid masonry fence with a timber slat fence. <p>The required side setback ranges from 1.84m to 2.9m. The proposal provides for setbacks 2.0m to 2.48m. In this regard it is considered that the setbacks as proposed are appropriate for the following reasons:</p> <ul style="list-style-type: none"> • The additions to the existing ground floor level are consistent with the existing setbacks. • The new upper level is provided with increased setbacks to provide articulation and minimise bulk and scale. • The setback does not result in any unreasonable overshadowing. • The proposal does not reduce privacy to the adjoining properties this has been achieved by providing only bedrooms and bathrooms on the upper level. <p>The proposed garage is provided with a nil setback to the western side boundary. However, this replaces an existing carport and is a non-habitable structure. Further the proposal does not provide for any window or door openings to the western elevation. This setback does not result in any loss of privacy, amenity, solar access or views to the adjoining property.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	Rear Setback – Minimum 8.0 metres	Yes Proposal is provided with ample setback to the rear boundary.
Landscaping/Open Space	<p>Open Space Area 3: Minimum total open space: 55% of site area.</p> <p>Minimum soft open space as % of total open space: 35%</p> <p>Minimum number of endemic trees: 3 trees required</p> <p>Private open space to be directly accessible from living areas. Minimum dimension 3m. Minimum area of 18m².</p>	<p>Yes The proposal provides for the following: Total Open Space: 296.5m² or 57% Soft Open Space: 108.5m² or 37% of the 'required' total open space.</p> <p>Yes The proposal provides for a landscape plan which provides for 3 trees (1 existing).</p> <p>Yes The proposal retains the existing private open space and improves accessibility by the inclusion of a new sliding doors on the rear elevation of the ground floor and upgraded outdoor open space area.</p>
Parking and Access	<p>Minimum 2 Spaces per Dwelling.</p> <p>Garages/carports shall be sited so as to not dominate the street frontage through the use of appropriate materials.</p> <p>Carports forward of the building line shall be open on all sides.</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>The proposal provides for a new garage in lieu of the existing carport. It is considered that the garage location is appropriate in this instance for the following reasons:</p> <ul style="list-style-type: none"> • The proposal replaces an existing carport which essentially enclosed on three sides. • The garage is compatible with the streetscape in this portion of Clifford Avenue. There are a number of garage structures with nil setback to the street frontage.

Clause/ Design Element	DCP Requirement	Compliance/Comments
		<ul style="list-style-type: none"> • There is no alternative for parking on site given the location of the existing dwelling. • The streetscape will be improved by the provision of new lightweight style fencing to replace the existing solid masonry fencing. • The garage width does not exceed 50% of the street frontage.
First Floor Additions	Additions may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. Must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences	Yes The proposed upper level provides for increased boundary setbacks.
Fences	Maximum height 1.0m for solid Maximum height 1.5m where at least 30% is transparent.	Yes The proposal provides for a new fence to replace the existing solid masonry fence (1.8m high). The new fence will comprise low masonry wall with timber picket fence above. This provides for a more open fence which will improve the presentation to the streetscape.

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

6. EP & A ACT - SECTION 4.15

The Provisions of any Environmental Planning Instruments

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

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

The Likely Impacts of the Development

It is considered that the development will provide for additions to an existing dwelling without detrimentally impacting on the character of the area. The proposal does not result in the removal of any significant vegetation and there is no decrease in pervious area. The design of the proposal is such that they do not result in any unreasonable loss of privacy.

The Suitability of the Site for the Development

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

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

The Public Interest

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

7. CONCLUSION

This application seeks approval for the construction of alterations to an existing dwelling. As demonstrated in this report the proposal is consistent with the aims and objectives of the Manly Local Environmental Plan 2013 and the Manly DCP 2013. The proposal does not have any detrimental impact on the amenity of the adjoining properties or the character of the locality.

It is therefore considered that the proposed of alterations/additions to an existing dwelling upon land at **No. 7 Clifford Avenue, Fairlight** is worthy of the consent of Council.

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Nolan Planning Consultants
March 2019

APPENDIX A – LOCALITY ANALYSIS

The Clifford Avenue locality is characterised by a mix of single, two and three storey dwellings and some residential flat buildings.

There is a large variety of roof forms in this area including flat, low pitched or conventional pitched roof forms. Dwellings are constructed of a variety of materials with no consistent architectural theme. This portion of Clifford Avenue is characterised by high solid fencing and some parking structures with a nil setback to the street frontage.

The proposed development has been designed to complement the existing locality. The design of the proposal in response to the locality and the site's constraints and opportunities and this is demonstrated in the Statement of Environmental Effects.

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

For: Proposed Dwelling Alterations and Additions
At: 7 Clifford Avenue, Fairlight
Applicant: Mr & Mrs Opadchy

Introduction

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of dwelling alterations and additions at **7 Clifford Avenue, Fairlight**.

The specified maximum building height under Clause 4.3 (1) of the Manly Local Environmental Plan 2013 (the LEP) is 8.5m. The development proposes a departure from this numerical standard and proposes a maximum height of 9.19m.

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

Background

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

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

Due to the siting of the existing building and sloping topography of the site, the proposed new works will be up to approximately 9.19m in height (RL 32.81).

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

Due to the existing elevated ground level, a portion of the new roof will be up to approximately 9.54m in height above the existing ground levels. Noting that the existing ground level at the rear of the dwelling has been substantially excavated.

The substantial majority of the dwelling is comfortably under Council’s maximum height control of 8.5m above existing ground level. The area of non-compliance is in the middle of the site and not visible from the street, with the front of the dwelling complying with the height controls.

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

Purpose of Clause 4.6

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

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

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

Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

Justification of Proposed Variation

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

Paragraph 27 of the Samadi judgement states:

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

Precondition 1 - Consistency with zone objectives

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

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

Comments

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

- The proposal will be consistent with and complement the existing residential development within the locality.
- The overall height of RL32.81 is compatible with the height of the surrounding properties, with particular reference to the adjoining property No. 5 Clifford Avenue (RL32.73).
- 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 water views. (See discussion on view sharing in the Statement of Environmental Effects).

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

Precondition 2 - Consistency with the objectives of the standard

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

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
 - (b) *to control the bulk and scale of buildings,*
 - (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
 - (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comments

Whilst the proposal will present a minor variation to the statutory height limit as a result of the existing topography of the site, the proposal is considered to be in keeping with the objectives of Clause 4.3.

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

The proposal is generally consistent with the height and scale of newer development in the locality. The overall height of RL32.891 is compatible with the height of the surrounding properties, particularly No. 5 Clifford Avenue which provides for a height of RL32.73. The development in this street is varied including single detached housing (many being multi levels) and multi level residential flat buildings.

The proposed new works to the existing dwelling are subject to a maximum overall height of 8.5m, and the proposal will provide for a height of up to 9.548m above existing ground level and 9.19m above natural ground level.

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

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

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

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

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

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality. The overall height of RL32.81 is compatible with the height of the surrounding properties, with particular reference to the adjoining eastern dwelling No. 5 Clifford Avenue (RL32.73).
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

- The development provides for reasonable sharing of views as is discussed in detail in the Statement of Environmental Effects.

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

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

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

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

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

- Compliance with the height control is unreasonable given the significant slope and previous excavation of the site.
- Compliance could be achieved with a flat roof, however this would be detrimental to the design and character of the streetscape. The proposal provides for a conventional pitched roof form (albeit a reduced pitch) to match the existing dwelling and complement the character of the locality.
- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties. The overall height of RL32.81 is compatible with the existing surrounding development with particular reference to No. 5 Clifford Avenue which has a ridge height of RL32.73. The proposal provides for increased setbacks as wall heights increase and is well articulated on all facades.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity comprises a variety on single detached dwellings (many of which are multi storey) interspersed with residential flat buildings. This proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale. A detailed view analysis is contained in the Statement of Environmental Effects.

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

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

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

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

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

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

Accordingly, in regard to the proposed development at 7 Clifford Avenue, Fairlight, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

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

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

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

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

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

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

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

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

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

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

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

Comment: Not applicable.

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

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

Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum overall height of 9.19m (9.548m above existing ground level).

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

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

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

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

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