

STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS
TO AN EXISTING DWELLING**

AT

42 BEATTY STREET, BALGOWLAH HEIGHTS

FOR

TIE YING HUANG



**Prepared
September 2020**

Table of Contents

1.0	Introduction	3
2.0	Property Description	3
3.0	Site Description	4
4.0	Surrounding Environment	8
5.0	Proposed Development.....	9
6.0	Zoning and Development Controls.....	11
6.1	State Environmental Planning Policy (Coastal Management) 2018	11
6.2	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	15
6.3	State Environmental Planning Policy No. 55 – Remediation of Land	20
6.4	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	20
6.5	Manly Local Environmental Plan 2013	20
6.6	Manly Development Control Plan 2013	25
7.0	Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979.....	35
7.1	The provisions of any environmental planning instrument.....	35
7.2	Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and.....	35
7.3	Any development control plan	35
7.4	Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	36
7.5	The regulations (to the extent that they prescribe matters for the purposes of this paragraph),	36
7.6	The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.	36
7.7	The suitability of the site for the development	36
7.8	Any submissions made in accordance with this Act or the regulations	36
7.9	The public interest	36
8.0	Conclusion	37

1.0 Introduction

This Statement of Environmental Effects accompanies architectural details prepared on behalf of THW Architects, Job No. 165, Drawings No's 00 – 04, 10 – 13, 20 – 21, 100 – 103 & 200, dated 28 September 2020 to detail the proposed construction of alterations and additions to an existing dwelling at **42 Beatty Street, Balgowlah Heights**.

This Statement reviews the proposed development by assessing the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, (as amended) including:

- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *State Environmental Planning Policy No 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013*

2.0 Property Description

The subject allotment is described as **42 Beatty Street, Balgowlah Heights**, being Lot 17A within Deposited Plan 350345 and is zoned E3 Environmental Management under the Manly Local Environmental Plan 2013.

The site is identified as being within the Coastal Environment Area and Coastal Use Area under the provisions of SEPP Coastal Management, and this matter will be discussed in further detail within this submission.

The dwelling is not listed as a heritage item within Schedule 5 of the Manly Local Environmental Plan 2013, nor is it noted as being within a Conservation Area.

The site is noted as Bush Fire Land on Council's Mapping. Accordingly, a Bushfire Risk Assessment Certificate has been prepared by The Fire Consultants dated 7 September 2020, which identifies the site is subject to a BAL 29 rating. The works will be carried out to meet this construction standard.

The site is identified on Council's DCP Landslip Hazard Map as being within Area G1 & G2. A Preliminary Landslip Assessment has been prepared by Crozier Geotechnical Consultants, dated 31 August 2020. This will be discussed further within this submission.

There are no other known hazards affecting the site.

The site is identified as being within the Biodiversity and Foreshore Scenic Protection Area. These matters will be discussed in further detail within this submission.

3.0 Site Description

The site is located on the eastern side of Beatty Street with a general fall to the rear, eastern boundary of approximately 16m. The eastern boundary adjoins Forty Baskets Beach.

The site is irregular in shape with a frontage of 15.41m to Beatty Street and a rear boundary of 15.305m. The northern and southern side boundaries measure 55.955m and 55.02m respectively. The total site area is 845.5m² (by survey).

The site is currently developed with a one, two and three storey rendered dwelling with a tile and metal roof.

The proposed works are largely contained within the building footprint and the existing stormwater arrangements will remain unchanged. Stormwater will continue to be dispersed within the site, below the dwelling.

Vehicular access is currently available to the site via a shared driveway from Beatty Street, with parking provided in an attached double garage.

The details of the site are included on the survey plan prepared by CMS Surveyors, Reference No. 19074, dated 17 February 2020, which accompanies the DA submission.

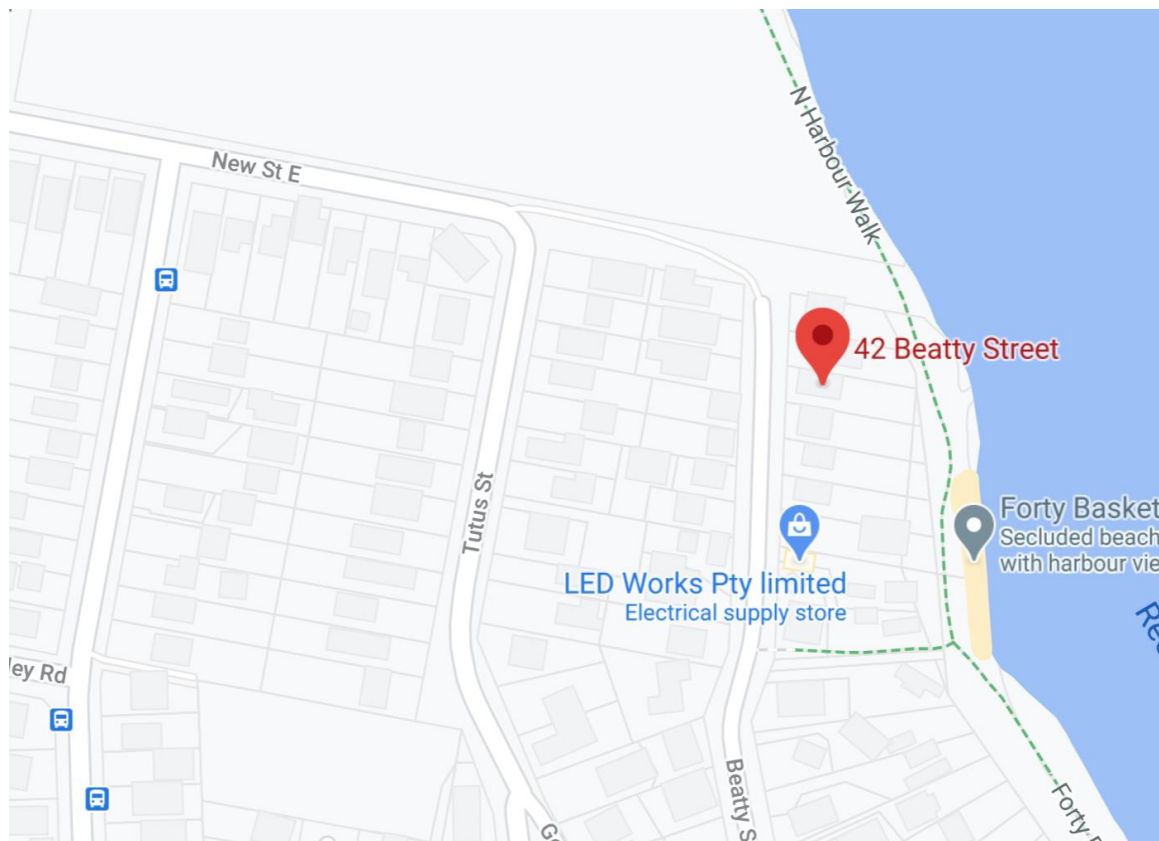
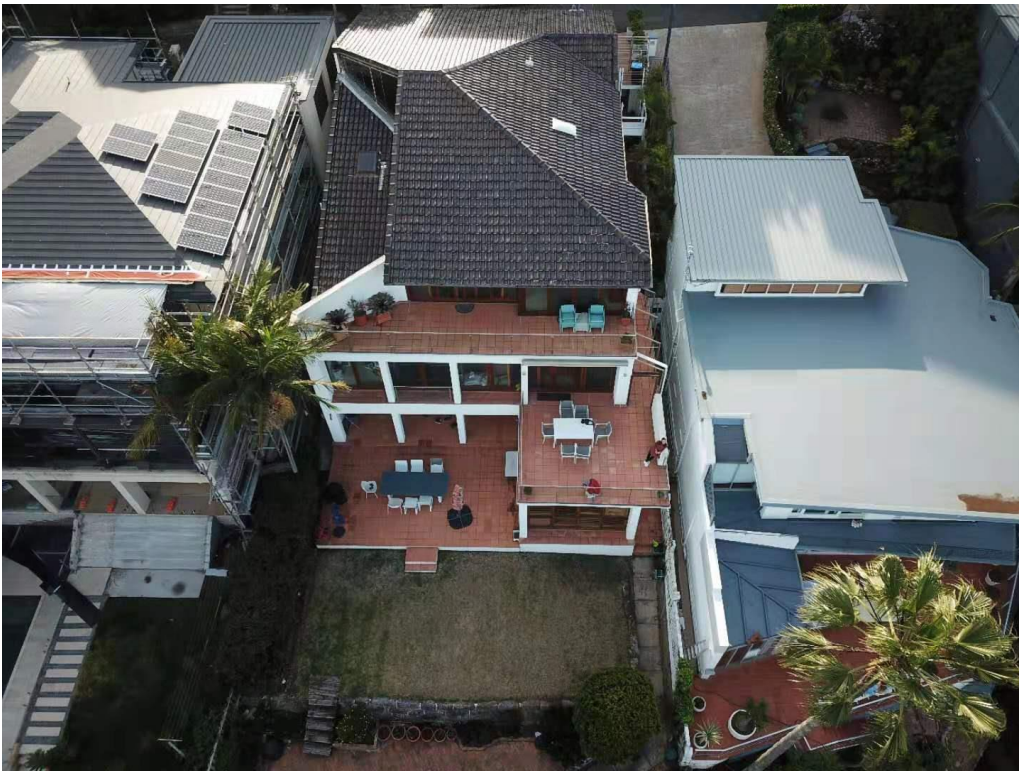


Fig 1: Location sketch
(Source: Google Maps)



Fig 2: View of the subject site and common access driveway, looking north-east from Beatty Street



Figs 3 & 4: Aerial views of the subject premises, looking west and showing general context with adjoining neighbours



Fig 5: View of existing rear lawn terrace, looking north



Fig 6: View looking towards the subject site, looking south-west from Forty Baskets Beach

4.0 Surrounding Environment

The area surrounding the site is predominantly represented by a mix of development comprising dwellings of varying sizes.

The dwellings in the vicinity have been designed with living areas and associated open space that are oriented to take advantage of the water views available to the site.

Views towards the east from the site towards Manly are available and are highly prized in this locality.

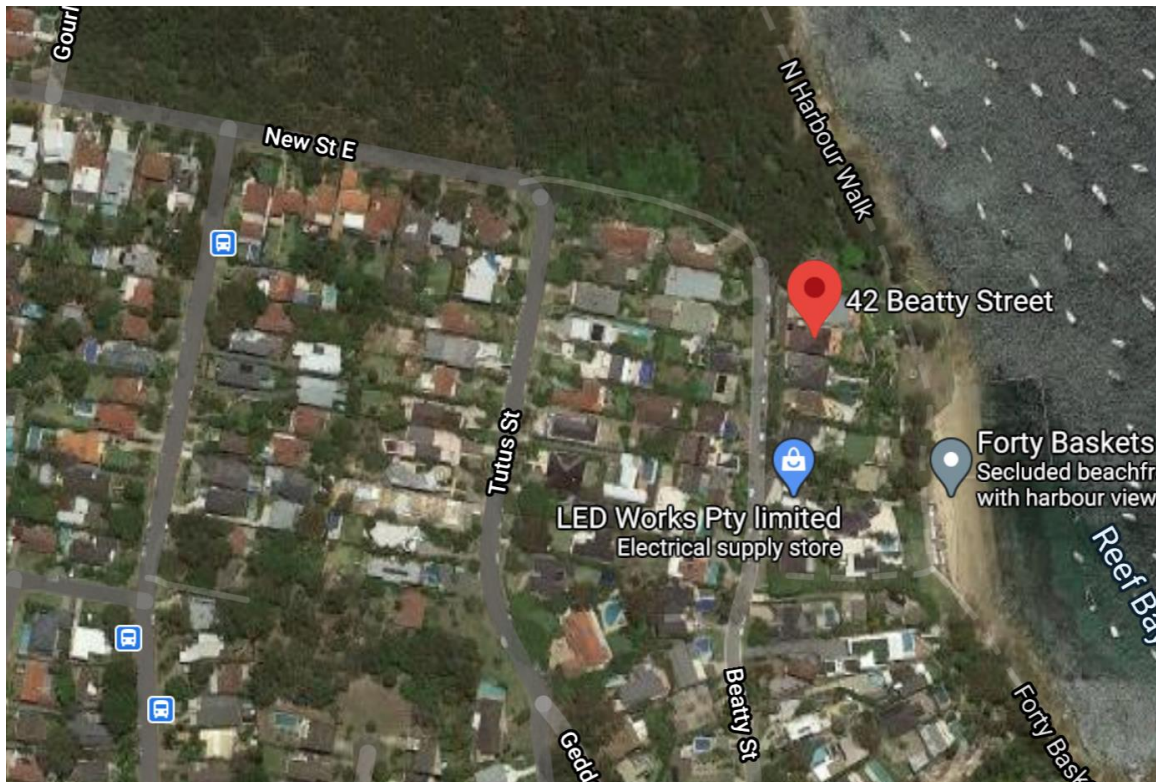


Fig 7: Aerial view of subject site
(Source: Google Maps)

5.0 Proposed Development

As detailed within the accompanying plans prepared by THW Architects, the proposal seeks consent for the construction of alterations and additions to the existing dwelling.

The proposed additions alterations to the dwelling will comprise:

Level One	Proposed alterations and additions to existing lower level to provide for a gym/family room, laundry, bathroom, internal passenger lift and rear alfresco with external stairs and planter boxes
Level Two	Proposed alterations and additions to existing level two to provide for new ensuite, new kitchen and pantries, lift shaft and balcony
Level Three	Proposed alterations and additions to existing level three to provide for new bedroom with ensuite, extension of sitting room, lift shaft and balcony

The proposal will not see any change to the existing overall ridge height of the dwelling, with the alterations to the roofline associated with the new bedroom to Level 3 to follow the existing maximum ridge level. As the works involve modest changes to the existing levels of the building, the proposal will maintain a compatible bulk and scale, with articulated wall lines and modulated elements which assist with minimising the visual impact of the proposed dwelling.

The proposed external finishes comprise painted render together with tiled roofing to match the existing finishes of the dwelling. The proposed external finishes are been detailed in Sheet A 104 -B.

As the proposed works are largely over the existing disturbed area of the site, a generous area of soft landscaping is maintained. The proposal does not seek the removal of any significant vegetation. New planter boxes are provided which assist with further softening and screening the built form of the development.

The development indices for the site are:

Site Area	845.5m ²
Permissible FSR	0.4:1 or 338.2m ²
Proposed FSR	0.449:1 or 379.8m ²
Required Open Space/Landscape	60% open space – 507.3m ² /40% landscaped area – 202.92m ²
Proposed Open Space	63.5% or 537.02m ² (remains unchanged)

Proposed Landscape	51% or 274.01m ²
--------------------	-----------------------------

6.0 Zoning and Development Controls

6.1 State Environmental Planning Policy (Coastal Management) 2018

The subject site is identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is applicable to the proposed development.

The stated Aim of the Policy under Clause 3 is to:

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.*

The Coastal Management Act 2016 states within **Clause 3**:

The **objects** set out in **Clause 3** of the Coastal Management Act 2016 are:

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote sustainable land use planning decision-making, and*
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
- (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*
- (h) to promote integrated and co-ordinated coastal planning, management and reporting, and*
- (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
- (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*

- (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
- (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*
- (m) to support the objects of the Marine Estate Management Act 2016.*

It is submitted that the assessment detailed under the Statement of Environmental Effects suggests that the proposed development is consistent with the objects of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016.

The matters for consideration under SEPP (Coastal Management) 2018 are addressed as follows:

Division 3 Coastal environment area

13 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) coastal environmental values and natural coastal processes,*
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment:

The proposal provides for the construction of alterations and additions to an existing dwelling. The proposed works will be carried out in accordance with the recommendations of the

consulting Structural Engineer, which will ensure that appropriate structural integrity for the site will be maintained.

The existing stormwater arrangements will remain unchanged, and are not considered to result in any adverse impacts within the coastal locality.

Sediment and erosion control measures will be carried out to minimise the impact of the works on the waterway.

Division 4 Coastal use area

14 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*
 - (b) is satisfied that:*
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

Comment

The proposal will not result in the removal of any existing public access along the foreshore.

The proposal will not result in any additional overshadowing to the foreshore area.

The proposed new development is modest in height and scale, and will not result in any loss of views to the foreshore area.

The site does not contain any heritage items, nor is it within a conservation area. The site has been previously cleared, and it is not anticipated that any items of Aboriginal heritage will be encountered.

Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment

The proposal provides for the construction of alterations and additions to an existing dwelling. The proposed new works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: No coastal management programs have been identified.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

Comment: Noted

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

Comment

Noted

6.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is located such that this proposal requires consideration against the provisions of State Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005 (SREP 2005).

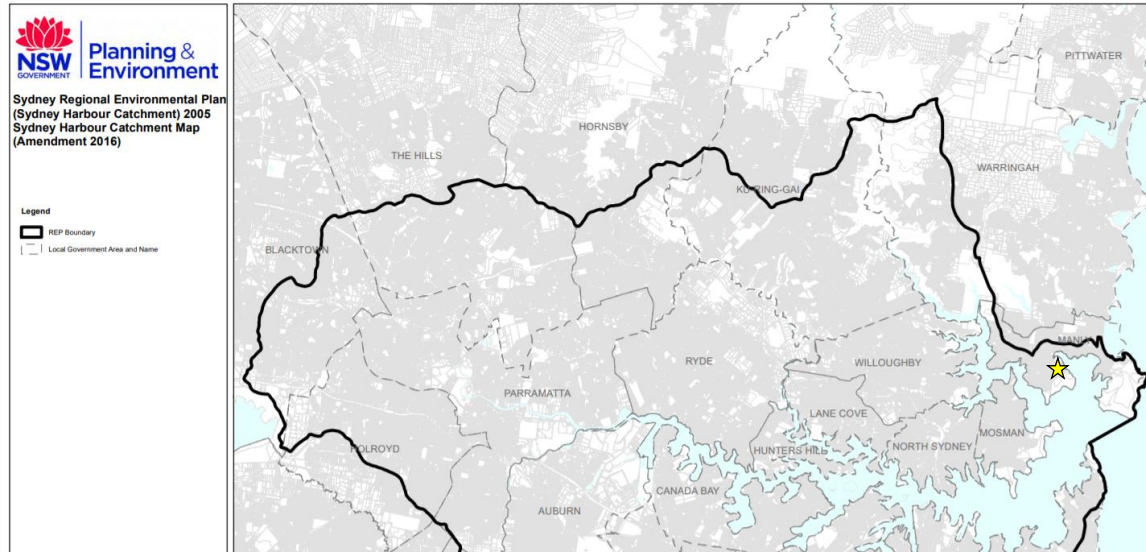


Fig 8: Extract from SH SREP

The proposed works are assessed against the requirements of this Policy as follows.

The subject site is located within the Sydney Harbour Catchment, however it is not identified as being within the Foreshores and Waterways Area.

The site does not adjoin any “Strategic Foreshore Sites”.

Clause 13 provides the planning principles for land within the Sydney Harbour Catchment and these are noted as:

- (a) *development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,*
- (b) *the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,*
- (c) *decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,*
- (d) *action is to be taken to achieve the targets set out in Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment (published in October 1999 by the Environment Protection Authority), such action to be consistent with the guidelines set out in Australian Water Quality Guidelines for Fresh and Marine Waters (published in November 2000 by the Australian and New Zealand Environment and Conservation Council),*

- (e) development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled Floodplain Development Manual 2005 (published in April 2005 by the Department),*
- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,*
- (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,*
- (h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,*
 - (i) action is to be taken to achieve the objectives and targets set out in the Sydney Harbour Catchment Blueprint, as published in February 2003 by the then Department of Land and Water Conservation,*
 - (j) development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,*
- (k) development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,*
- (l) development is to avoid or minimise disturbance of acid sulfate soils in accordance with the Acid Sulfate Soil Manual, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.*

As the proposal is seeking to provide for the construction of alterations and additions to an existing dwelling, with an appropriate bulk and scale which follows the topography of the land, the proposal is considered to be consistent with the relevant aims of the Clause.

The runoff from the proposed development will be suitably managed, with no increased stormwater loading to the public foreshore or waterway.

Clause 14 provides the planning principles for land within the Foreshores and Waterways area. The relevant principles are discussed below:

- (a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores*

Comment: The proposed works are within a disturbed area of the site. Given the reasonable separation from the foreshore area, it is not considered that there will be any significant impact on the natural assets or unique environmental qualities of Sydney Harbour and foreshores.

- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation*

Comment: The proposed works are wholly within private property and do not result in the removal or detrimental impact on any natural assets of the catchment. The extent of existing public access to the foreshore will not be unreasonably diminished as a result of the proposed works.

- (c) *access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation.*

Comment: As discussed, the proposed works are wholly on private property and do not result in the removal or detrimental impact on any natural assets of the catchment. The extent of existing public access to the foreshore will not be unreasonably diminished as a result of the proposed works.

- (d) *development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores*

Comment: The proposal will see the construction of additions and alterations to the existing dwelling which will complement existing neighbouring dwellings by being at a similar height and scale to the surrounding development along Beatty Street, and will not detract from the natural assets of the harbour locality.

The proposal will respect and complement the bulk and scale of the existing dwelling and is complementary to the existing development in the locality.

- (e) *adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses*

Comment: As discussed, the proposed works are wholly on private property and do not result in the removal or detrimental impact on any natural assets of the catchment. The proposal will not impact on the working function of the Harbour waters.

- (f) *public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes*

Comment: N/A to the proposed residential use.

- (g) *the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes*

Comment: N/A to the proposed residential use.

- (h) *water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront*

Comment: N/A to the proposed residential use.

- (i) *the provision and use of public boating facilities along the waterfront should be encouraged.*

Comment: N/A to the proposed residential use.

Part 3, Division 2 details the *Matters for Consideration* to be considered by the consent authority in the assessment of a proposal within the land subject to SREP 2005. As the works seek consent for construction of alterations and additions to an existing dwelling, which are well removed from the waterfront, the following Clauses of Division 2 are considered to be relevant to the proposal.

Clause 20 - General requires that Council take into consideration the Division prior to granting consent.

Clause 21 - Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows:

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

As the works will not have any physical impact on the waterway or the land adjoining the waterfront, the proposal is considered to be reasonable. No significant vegetation is to be removed to facilitate the construction.

The proposal is considered to have a neutral effect on the waterway.

22 Public access to, and use of, foreshores and waterways

The proposed works will not have any direct effect on the public use of the waterfront and will not diminish the public's ability to have access to and utilise the waterway.

23 Maintenance of a working harbour

The proposal will not have any impact on the harbour and will not affect the principles encouraging the maintenance of the harbour as a functional, working harbour.

24 Interrelationship of waterway and foreshore uses

The proposed works will not impact on the relationship between the public land and the waterway. The proposal is not inconsistent with the identified principles within Clause 24.

25 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows:

- (a) the scale, form, design and siting of any building should be based on an analysis of:
 - (i) the land on which it is to be erected, and*
 - (ii) the adjoining land, and*
 - (iii) the likely future character of the locality,**
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

The bulk and scale of the proposed works is compatible with the surrounding development along Beatty Street and due to the modest form will not have any detrimental impact on the visual qualities of the harbour and the foreshore area. The continued residential use of the land is a characteristic of the area and the anticipated future character of this locality.

26 Maintenance, protection and enhancement of views

By observing the objectives of Council's maximum height controls and allowing for views to and from the public spaces, the proposal will not have any detrimental effects on views to and from Sydney Harbour or the waterway.

27 Boat storage facilities

The proposed works are within private land and will not have any impact on boat storage facilities in the locality.

There are no other provisions of SREP (Sydney Harbour Catchment) 2005 that applies to the proposed development. It is considered that the proposal complies with SREP (Sydney Harbour Catchment) 2005.

6.3 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land and in particular Clause 7(1)(a) suggests that a consent authority must not grant consent to the carrying out of any development on land unless it has considered whether the land is contaminated.

Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

6.4 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal has been designed to respect the water, thermal and energy standards required by BASIX. A BASIX certificate has been submitted with the development application.

6.5 Manly Local Environmental Plan 2013

The land is zoned E3 Environmental Management under the provisions of the MLEP 2013.

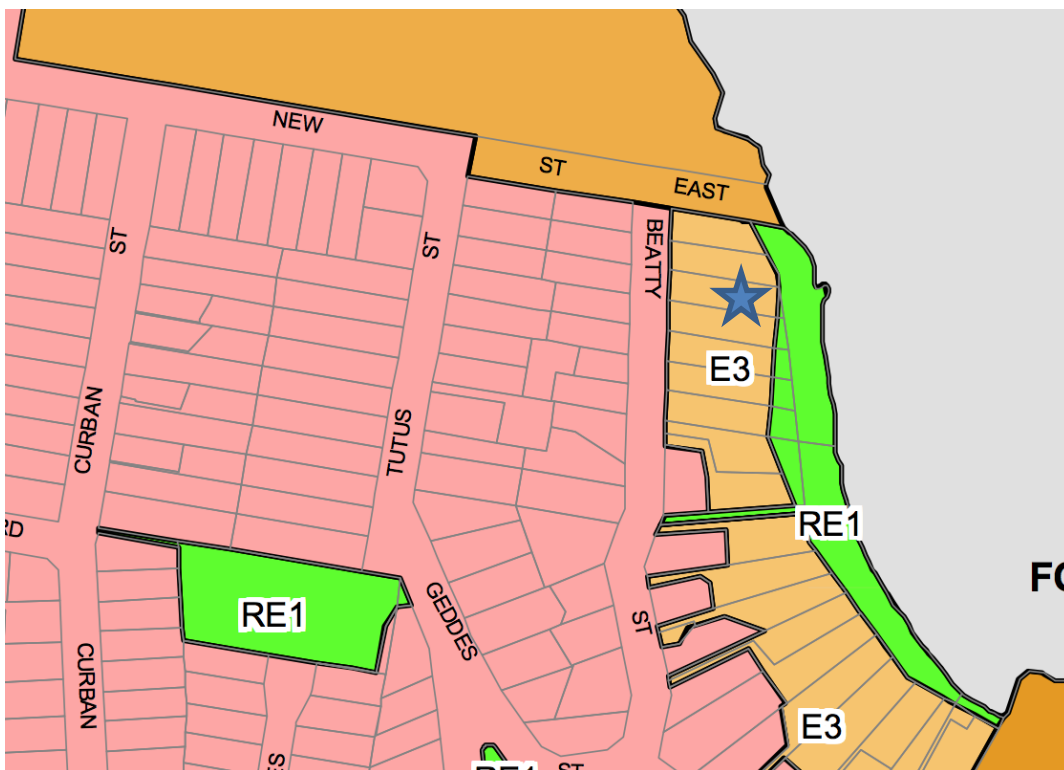


Fig 9: Extract of Manly Local Environmental Plan 2013 Zoning Map

The development of and use of the land for residential purposes is consistent with the objectives of the E3 Environmental Management, which are noted over as:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

It is considered that the proposed alterations and additions will achieve the zone objectives and are consistent with the established character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing detached style housing within the locality.
- The proposed development respects the scale and form of other dwellings in the vicinity and therefore complements the locality.
- The setbacks are compatible with the existing surrounding development.
- The site is utilised as housing and will continue to maintain the residential use.
- The works will provide for the construction of alterations and additions to an existing dwelling which will maintain the residential scale and character of the locality.
- The proposal will maintain an appropriate level of amenity to the adjoining properties.
- The proposal does not unreasonably obstruct any significant views from private property or the public domain. The proposed new works have been designed to allow for views to be enjoyed past and over the dwelling towards the east for properties to the west.
- As detailed in this report the proposal maintains appropriate solar access to the surrounding properties.

Clause 4.3 – Height of buildings

The dictionary supplement to the LEP notes building height to be:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The building height limit for development in this portion of Balgowlah Heights is 8.5m. The proposed new alterations and additions will maintain the existing overall height of 8.015m above natural ground level which readily complies with this control.

Clause 4.4 – Floor space ratio

A maximum floor space ratio control of 0.4:1 is required for development in this locality. The proposal provides a floor space ratio of 0.449:1, which does not comply with this provision. Accordingly, a submission has been prepared pursuant to Clause 4.6 and accompanies this statement.

Clause 6.2 – Earthworks

The proposed works will not require any substantial excavation to accommodate the proposed ground floor level.

All works will be carried out under the supervision and direction of a Structural Engineer and will be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.

Clause 6.4 – Stormwater management

The proposal meets the objectives of the clause as stated below in that:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

The proposed works are largely contained within the building footprint and the existing stormwater arrangements will remain unchanged.

The new roof areas will be connected to the existing drainage system which disperses stormwater within the lower portion of the site.

Clause 6.5 – Terrestrial biodiversity

The site is identified as being within the Biodiversity Area on Council's Mapping.

This clause provides that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The proposed alterations and additions are largely contained within the existing building footprint, and maintain a generous area of soft landscaping.

The proposal will not require the removal of any significant vegetation.

The proposal will not result in adverse environmental impacts and is therefore in keeping with the provisions of this clause.

Clause 6.8 – Landslide risk

The site is identified on Council's DCP mapping as being within Area G1 & G2 on the Landslip Hazard Map.

A Preliminary Landslip Assessment has been prepared by Crozier Geotechnical Consultants, Project No.: 2020-161 dated 31 August 2020. The assessment provides a checklist of potential hazards for the site and concludes that given the limited nature of the proposed works, a detailed Geotechnical Report with Landslip Risk Assessment is not required in this instance.

All works will be carried out under the supervision and direction of a Structural Engineer and will be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.

The proposal will therefore satisfy the provisions of this clause.

Clause 6.9 – Foreshore scenic protection area

The subject site is located in the Foreshore Scenic Protection Area.

This clause provides that development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (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 alterations and additions are modest in bulk and scale, and are not considered to result in any unreasonable loss of views to and from the foreshore area.

The proposal will not result in any additional overshadowing on the foreshore area.

The proposal is largely contained within the existing building footprint. A suitable area of soft landscaping is retained, and the proposal will not see the removal of any significant vegetation.

Given the complementary nature of the development, the proposal is not considered to detract from the scenic qualities of the locality.

Clause 6.10 – Limited development on foreshore area

The site is not burdened by the foreshore building line.

There are no other clauses of the MLEP 2013 that are considered to be relevant to the proposed development.

It is considered that the proposal achieves the requirements of the MLEP.

6.6 Manly Development Control Plan 2013

Council's DCP Development Control Plan 2013 provides the primary control for development within the area.

The DA submission will address the Council's submission requirements outlined in Part 2 – Process.

The primary areas which are applicable to the proposed works are detailed within Part 3 – General Principles of Development & Part 4 – Development Controls and Development Types.

Clause 3.1.1 Streetscape (Residential Areas)

It is suggested that the proposed alterations and additions, which presents a modest bulk and scale with articulated wall lines, will enhance the street view of the site.

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*

The proposal will see the construction of alterations and additions to an existing dwelling.

The proposed works are largely sited to the rear of the existing dwelling, and the works will not be prominently viewed within the streetscape. The proposal will continue to present a compatible bulk and scale as viewed from the streetscape and neighbouring properties.

The new works are complementary to the existing locality and the surrounding development. The proposal is complementary to the character of the Beatty Street streetscape, and is therefore worthy of Council's support.

Clause 3.3 Landscaping

The proposed new works will maintain a generous area of soft landscaping within the site. The new works will present an appropriate form and footprint, which is appropriately set back from the street, side and rear boundaries.

The proposed new planter boxes as detailed in the submitted Level 1 Floor Plan (Drawing No. A02) will assist with minimising overlooking to neighbouring properties, and softening and screening the built form of the development.

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

The objectives of the clause are noted as:

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

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

- The considered location of habitable room windows and doors assists with minimising opportunities for overlooking to neighbouring properties. The proposed gym/family room door opening within the northern elevation is sited at a low level within the site, and the existing boundary fencing will assist with minimising opportunities for overlooking to the north. The modest size of the kitchen window will provide light without creating any problematic privacy impacts. The proposed new rear balconies and alfresco are orientated towards the rear of the subject site. Privacy screening can be provided if necessary. The proposed balconies are not anticipated to result in any unreasonable overlooking to the adjoining neighbours.
- The proposal is accompanied by Shadow Diagrams (Drawing No. A101 – A1020) which demonstrate the solar access received by the subject and neighbouring properties throughout the day. As the proposal will not increase the existing ridge height of the dwelling, the proposal will not see any substantial change to the existing solar access received by the internal living areas and private open space of the subject dwelling and neighbouring properties as indicated in the aerial and elevational shadow diagrams.
- The proposed new works are modest in bulk and scale, and will not result in any significant or adverse visual impacts within the locality.
- The subject and adjoining properties enjoy views to the east towards Manly. The proposed alterations and additions to the existing dwelling have maintained a compatible overall height and suitable setbacks to property boundaries, in order to maximise view retention for the uphill properties to the west. Consideration has been given to the existing outlook for the adjoining properties to the north and south, which enjoy views across the front portion of the site.

- The location of the proposed dwelling allows for continued views diagonally across the front portion of the site, with the proposed glass balustrades to the rear balconies to allow for views to be maintained over and past the proposed dwelling,
- Given the residential nature of the proposed development, no adverse acoustic impacts for neighbouring properties are anticipated.

Clause 3.5 Sustainability

A BASIX Certificate has been prepared to support the proposed development and confirm that the proposed development will achieve the appropriate thermal performance criteria.

Clause 3.7 Stormwater Management

The proposal will not see a substantial change to the hard surface areas within the site.

The new roof areas will be connected to the existing system which disperses stormwater within the lower portion of the yard.

Part 4 – Residential Development Controls

Site Area 845.5m² - Density Sub Zone D9 (1150m² per lot)

Compliance Table

Control	Required	Proposed	Compliance
Clause 4.1.1 Residential Density & Subdivision	Density Area D9 – 1 dwelling per 1150m ²	Site area 845.5m ²	Yes – existing site and dimensions are unchanged
Clause 4.1.2 Height of Buildings	Maximum height – 8.5m	Maximum height of new works – 8.015m	Yes
	Wall height – 7.2m	Max proposed southern wall height 8m respectively.	No – refer to comments below table
	Max two storeys	Max two storeys	Yes
	Roof height – 2.5m above wall height	<2.5m	Yes

Clause 4.1.13 Floor Space Ratio (FSR)	0.4:1	Proposed FSR 0.449:1	No – See Clause 4.6 Submission
Clause 4.1.4 Setbacks (front, side and rear)	<u>Front</u> a) Relate to neighbouring sites and the prevailing building lines or 6m c) Projections into the front setback may be accepted for unenclosed balconies, roof eaves, sun-hoods, chimneys, meter boxes and the like, where no adverse impact on the streetscape or adjoining properties is demonstrated to Council's satisfaction.	No change to existing front setback.	N/A
Side Boundary setback – 1/3 of wall height	<u>Side</u> Northern side - 1/3 x 8m = 2.67m (new works up to 5.2m and 1.7m setback applies) Southern side - 1/3 x 8m = 2.67m	Proposed new works at levels 1 and 2 are set back between 1.165m and 1.295m from the northern side boundary. The proposed new level 3 extension will stand 1.135m from the southern side boundary, and therefore does not comply with the side setback control.	Yes – on merit (refer to comments below table)
Rear setback – 8m		The proposal maintains a setback in excess of 28.3m,	N/A

		which comfortably exceeds Council's minimum rear setback requirement.	
Clause 4.1.5 Open space and Landscaping	Area OS 4 Open space: Min 60% site area Landscaping: 40% of open space	Proposed open space – 63.5% Proposed soft open space – 51%	Yes
Clause 4.1.6 Parking	Min 2 spaces	Parking for two cars will be maintained in the existing double garage.	Yes
Clause 4.1.6.4 Vehicular Access	a) All vehicles should enter and leave the site in a forward direction. b) Vehicular access and parking for buildings with more than 1 dwelling is to be consolidated within one location, unless an alternative layout/design would better reflect the streetscape or the building form. c) Vision of vehicles entering and leaving the site must not be impaired by structures or landscaping. d) Particular attention should be given to separating	No change to existing vehicular access arrangements.	Yes

	pedestrian entries and vehicular crossings for safety.		
Clause 4.1.6.6 Tandem, Stacked and Mechanical Parking Areas	The design location and management of parking facilities involving tandem, stacked and mechanical parking (including car stackers, turntables, car lifts or other automated parking systems) must consider the equitable access and distribution of parking spaces to all occupants and visitors to the building. In this regard: a) all parking spaces in any tandem or stacked arrangement are to be allocated to the same dwelling/strata unit and must not be used as visitors parking; and b) where the proposed development involves a tandem, stacked and mechanical parking arrangement which necessitates more than one parking space being attributed to a single dwelling unit under paragraph i) above;	N/A – double garage maintained	N/A

	Council must be satisfied that sufficient parking spaces are reasonably allocated to all other dwelling units within the development.		
Clause 4.1.7 First Floor and Roof Additions	a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of Manly. In this regard, it may be preferable that the addition be confined to the rear of the		N/A

	premises or be contained within the roof structure.		
Clause 4.1.8 Development on Sloping Sites	<i>Area G1 & G2</i>	A Preliminary Landslip Assessment has been prepared by Crozier Geotechnical Consultants which suggests that given the minimal site disturbance and the nature of the site, further geotechnical assessment is not required. All works will be carried out under the supervision and direction of a Structural Engineer and will be managed to ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.	Yes
Clause 4.1.9 Swimming pools, spas and Water features	Height above ground not more than 1m Setback of outer edge of pool concourse from side and rear boundaries must be at least 1m with water line being at least 1.5m from the boundary Pool not to exceed 30% of total open space	No pool proposed.	N/A

Clause 4.1.10 Fencing	Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.	No freestanding walls or fences proposed	N/A
---------------------------------	--	--	-----

Wall Height

Development in this locality is subject to a maximum wall height of 7.2m.

The proposal will not see any change to the existing wall height of the northern elevation, however the maximum proposed southern wall height is up to 8m and therefore does not comply with this control.

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),*

The proposal will not see any change to the existing maximum ridge height of the dwelling, and the proposed new works maintain compliance with the statutory height limit.

The streetscape appearance of the site is maintained, and the proposal will continue to present a modest single storey scale to the Beatty Street streetscape.

Compliance with this control is constrained by the siting of existing development, together with the sloping topography of the site.

The bulk and scale will not be substantially altered, and maintains consistency with the extent of existing surrounding development in the locality.

The retention of the existing ridge height and the general siting of the existing dwelling assists with maintaining views over the dwelling for uphill properties, views between public spaces in the locality, and views to existing surrounding development.

Notwithstanding the minor variation to this control, the proposal is in keeping with the desired outcomes of this clause and the proposed wall height is considered worthy of support on merit.

Side Setbacks

Development is subject to a maximum side setback equal to one-third of the wall height. Accordingly, the proposed works at the northern elevation are subject to a minimum side setback of 1.7m, and proposed works within the southern elevation are subject to a minimum side setback of 2.67m.

The proposed new works are set back between 1.165m and 1.295m from the northern side boundary, and the proposed new level 3 extension will stand 1.135m from the southern side boundary. The proposal therefore does not comply with the side setback control.

The objectives of this control are as follows:

- *To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*
- *To ensure and enhance local amenity.*
- *To promote flexibility in the siting of buildings.*
- *To enhance and maintain natural features.*
- *To assist in appropriate bush fire asset protection zones.*

Compliance with the side setback control is constrained by the sloping topography of the site, together with the siting of the existing dwelling.

The portion of the development that does not comply with the side setback requirement is not considered to result in any adverse impacts for neighbouring properties in terms of solar access, views, or general amenity.

As discussed previously, the considered location of habitable room windows assists with minimising opportunities for overlooking.

The proposed side boundaries are capable of accommodating soft landscaping, and a suitable area of soft landscaping and open space is retained within the site.

The proposed side setbacks are therefore considered worthy of support on merit.

7.0 Matters for Consideration under Section 4.15 of The Environmental Planning and Assessment Act, 1979

7.1 The provisions of any environmental planning instrument

The proposal is subject to the provisions of the Manly Local Environmental Plan 2013 and the relevant supporting Council policies. It is considered that the provisions of this environmental planning instrument have been satisfactorily addressed within this report and that the proposal achieves compliance with its provisions.

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

7.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

7.3 Any development control plan

The development has been designed to comply with the requirements of Council's Manly Development Control Plan 2013.

It is considered that the proposed design respects the aims and objectives of the DCP however we note that the Environmental Planning and Assessment Amendment Act 2012 No 93 (Amendment Act) which received assent on 21 November 2012 commenced on 1 March 2013.

Key amongst the amendments are requirements to interpret DCPs flexibly and to allow reasonable alternative solutions to achieve the objectives of DCP standards.

The new section 3.42 provides that the 'principal purpose' of DCPs is to 'provide guidance' on:-

- giving effect to the aims of any applicable environmental planning instrument
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The key amendment is the insertion of section 4.15(3A) which:

- prevents the consent authority requiring more onerous standards than a DCP provides,
- requires the consent authority to be 'flexible' and allow 'reasonable alternative solutions' in applying DCP provisions with which a development application does not comply,
- limits the consent authority's consideration of the DCP to the development application (preventing consideration of previous or future applications of the DCP).

We request that Council applies considered flexibility where the application seeks variations to numerical development controls in the DCP as justified in this report. In particular we consider that the variation to the wall height and side setback controls is a reasonable alternative solution

to compliance where the site conditions result in a challenge to designing for new development which fully respects the criteria.

It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.

7.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

No matters of relevance are raised in regard to the proposed development.

7.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

7.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

It is considered that the proposal, which seeks consent for the construction of alterations and additions to the existing dwelling, will not unreasonably impact upon the amenity of adjoining properties or upon the character of the surrounding area. It is considered that the resultant development is compatible with and will complement the residential character of the area.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's MLEP 2013 and Council's Codes and Policies, in particular the Manly DCP 2013.

7.7 The suitability of the site for the development

The subject land is currently zoned E3 Environmental Management under the Manly Local Environmental Plan 2013 and is considered suitable for the proposed development.

7.8 Any submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

7.9 The public interest

The proposal will not impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered to be within the public interest.

8.0 Conclusion

The principal objective of this development is to provide for the construction of alterations and additions to the existing dwelling, which respects and complements the site's location.

It is considered that the proposed works satisfy the stated objectives of Council's Development Controls. By maintaining our neighbours amenity and by complementing the existing style and character of the surrounding locality, the stated objectives have been satisfied.

As the proposed development will not have any significant impact on the environment, scenic quality of the area or the amenity of the adjoining allotments, the issue of Development Consent under the delegation of Council is requested.

VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

APPENDIX
CLAUSE 4.6 – FLOOR SPACE RATIO

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**42 BEATTY STREET, BALGOWLAH HEIGHTS
FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING
DWELLING**

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

For: Construction of alterations and additions to an existing dwelling
At: 42 Beatty Street, Balgowlah Heights
Owner: Tiw Ying Huang
Applicant: Tiw Ying Huang
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

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

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within this area of the Manly locality to a maximum floor space ratio of 0.4:1.

As a consequence of the proposed additions to the existing dwelling, the proposed development will present a total gross floor area of 379.8m² or 0.449:1, which will result in a noncompliance of 41.6m² or 12.3% m².

It is noted that the existing dwelling presents a gross floor area of 349.7m² or a FSR the 0.413:1.

Due to the extent of existing development, the proposed new works will present a floor space ratio of up to 0.449:1.

The proposal is considered to be acceptable on merit as there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.4 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:
“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”
- (b) Clause 4.4 relates to the maximum height of a building. Accordingly, Clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

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

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument 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 relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

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 the LEP 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 4.4 (the Maximum Floor Space Ratio Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP 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 maximum floor space ratio development standard pursuant to Clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.4:1 in this area of Manly. The proposed new development will result in a maximum floor space ratio of 0.449:1 and exceed the floor space ratio control by 41.6m² or 12.3%.

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 Planning 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 requires the consent authority to be satisfied that the concurrence of the Planning 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 the LEP 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 should 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 and 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 4.4 of the LEP from the operation of clause 4.6.

The specific 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 the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E3 Environmental Management Zone, which are noted as:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- To provide for a limited range of development that does not have an adverse effect on those values.*
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The new works provide a bulk and scale which is in keeping with the desired future character of the locality, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

The works will not see any unreasonable adverse impacts on the solar access enjoyed by adjoining dwellings.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum floor space ratio standard contained in Clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies a maximum floor space ratio of 0.4:1 in this area of Manly.
- 5.3 The proposed residential flat development will have a floor space ratio of 0.449:1, which exceeds the floor space ratio control by 41.6m² or 12.3%.

6.0 Relevant Caselaw

- 6.1 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]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

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.*

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

1. Is Clause 4.4 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 R3 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 4.4 of MLEP?

7.0. Request for Variation

7.1 Is Clause 4.4 of MLEP a development standard?

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

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

- (b) Clause 4.4 relates to the floor space ratio of a building. Accordingly, Clause 4.4 is a development standard.

7.2 Is compliance with Clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st 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 maximum floor space ratio standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The proposed works are largely sited to the rear of the existing dwelling, and the works will not be prominently viewed within the streetscape. Due to the site’s sloping topography, the proposal will continue to present a modest single storey scale to Beatty Street.

The new works are complementary to the existing locality and the surrounding development, and will continue to present a compatible bulk and scale as viewed from the streetscape and neighbouring properties.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

The proposed works are largely contained within the existing building footprint. The proposal will not require the removal of any significant vegetation, and maintains a generous area of soft landscaping.

The proposal will not obscure any important natural or built features.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

The proposal provides for alterations and additions to an existing dwelling, which

generally follow the siting of the existing dwelling and will not exceed the existing maximum ridge height.

The proposed new works maintain consistency with the character of the existing development and wider locality, and as discussed above, are in keeping with the landscaped character of the locality.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

The proposed works are largely contained within the existing building footprint, and will not require the removal of any significant vegetation. The site maintains a generous area of soft landscaping.

Runoff from the new roof areas will be connected to the existing stormwater system.

No environmental impacts are therefore anticipated.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

This clause does not relate to the subject residential development.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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.*

In Initial Action the Court found at [23]-[24] that:

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].*
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].

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will maintain consistency the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for residential amenity within a built form which is compatible with the streetscape of Beatty Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development will not result in the loss of any substantial views for neighbouring properties (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives of the E3 Environmental Management Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the E3 Environmental Management Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *“The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone”*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the floor space ratio control, the proposed development will be consistent with the individual Objectives of the E3 Environmental Management Zone for the following reasons:

- **To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.**

The proposed works are largely sited to the rear of the existing dwelling, and the works will not be prominently viewed within the streetscape. Due to the site’s sloping topography, the proposal will continue to present a modest single storey scale to Beatty Street.

In addition, the proposed works are largely contained within the existing building footprint, and will not require the removal of any significant vegetation. The site maintains a generous area of soft landscaping.

Runoff from the new roof areas will be connected to the existing stormwater system.

The proposal is therefore considered to be in keeping with the ecological and aesthetic values within the locality.

- **To provide for a limited range of development that does not have an adverse effect on those values.**

The proposal provides for alterations and additions to an existing dwelling which are considered to be in keeping with the ecological and aesthetic values within the locality.

- **To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.**

The proposal will not require the removal of any significant vegetation. The proposed alterations and additions are compatible with existing surrounding development in the locality, and will not visually dominate the foreshore.

- **To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.**

As discussed previously, the proposed alterations and additions are compatible with existing surrounding development in the locality, and will not visually dominate the foreshore. The proposal will not require the removal of any natural vegetation or geological features.

- **To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.**

The proposal will retain a generous area of soft landscape, with the existing plantings to be retained. The property boundaries are capable of accommodating additional plantings as required.

The new roof areas will be connected to the existing stormwater system, and runoff from the site will be suitably managed. As the runoff is clean roofwater, no water quality issues are anticipated.

- **To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.**

The proposal provides for alterations and additions to an existing, which maintain compliance with the statutory height control. The new works will not exceed the existing ridge height of the dwelling, and maintain an appropriate bulk and scale within the locality. The proposal suitable responds to the site constraints, including the sloping topography and siting of the existing dwelling.

No significant vegetation will be removed.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the 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 development 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.

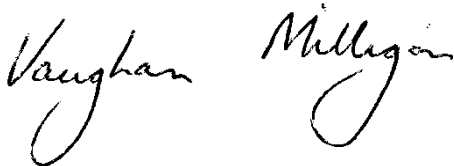
7.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum floor space ratio of 0.449:1.

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

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

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



VAUGHAN MILLIGAN

Town Planner