

Memo

Development Assessment

To: Development Determination Panel

Cc: Rodney Piggott
Manager, Development Assessment

From: Maxwell Duncan
Principal Planner

Date: 30 August 2024

Subject: DA2023/1824 - 8 Alma Street, Clontarf

Record Number: 2024/622167

The purpose of this memo is to advise the Panel that additional information has been provided by the applicant. The additional information includes:

1. **Amended Plans** The plans amended the application as follows:
 - Deletion of the storage area to the rear of the lower floor.
2. **Updated clause 4.6 (Floor Space Ratio) to reflect the reduced gross floor area.**

Re-notification of the proposed development was not required, in accordance with the Northern Beaches Council Community Participation Plan (CPP), as the proposed amendments would have a reduced environmental impact.

The amended proposal results in a total FSR of 0.535:1 (298.73sqm), which exceeds the 0.4:1 (222.56sqm) FSR development standard for the site. The site is undersized and based on the minimum lot size of 750sqm, would comply with the FSR standard of 300sqm (0.4:1) for a 750sqm site consistent with the MDCP provisions.

An updated Clause 4.6 assessment has been provided below to reflect the amended gross floor area (see Appendix 1).

The proposed amendments will reduce the overall scale of the proposed lower ground floor.

Therefore, the proposed amendments are supported.

RECOMMENDATION

As a result of the proposed revised drawings, it is recommended that Condition 1 – Approved Plans and Supporting Documentation for DA2023/1824 be amended as follows:

- **Amend Condition 1 - Approved Plans and Supporting Documentation- to read**

as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA1	-	Cover Page, Colour Render	sketchArc	N/A
DA4	-	Site, Site Analysis, Sediment Control and Waste Management Plan	sketchArc	29 August 2024
DA5	-	Lower Floor Plan	sketchArc	29 August 2024
DA6	-	Ground Floor Plan	sketchArc	29 August 2024
DA7	-	First Floor Plan	sketchArc	29 August 2024
DA8	-	Roof Floor Plan	sketchArc	29 August 2024
DA9	-	Front fence/ South/ North Elevation	sketchArc	29 August 2024
DA10	-	West Elevation	sketchArc	29 August 2024
DA11	-	Street Elevation	sketchArc	29 August 2024
DA12	-	Section A-A, Section B-B	sketchArc	29 August 2024
DA13	-	Section C-C, Section D-D	sketchArc	29 August 2024
L-01	C	Landscape Site Plan	Serenescapes	29 May 2024
L-02	C	Zone A - Detail Planting Plan	Serenescapes	29 May 2024
L-03	C	Zone B - Detail Planting Plan	Serenescapes	29 May 2024
L-04	C	Sections Elevations	Serenescapes	29 May 2024
L-05	C	Sections Elevations	Serenescapes	29 May 2024
L-06	C	Sections Elevations	Serenescapes	29 May 2024
L1	-	Stormwater Management Plan	Taylor Consulting	17 November 2023
L1	-	Stormwater Management Details	Taylor Consulting	17 November 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document

BASIX Certificate No. A1376337_02	2	Bodill Ventures	6 June 2024
Aboricultural Impact Assessment	-	Peake Arboriculture	15 November 2023
Waste Management Plan	-	Vaughan Milligan Development Consulting	20 November 2023
Preliminary Geotechnical Assessment	-	White Geotechnical Group	21 November 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

APPENDIX 1 – Clause 4.6 Assessment

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 (Floor Space Ratio)

Requirement: 0.4:1 (222.96sqm)

Proposed: 0.535:1 (298.73sqm)

Percentage of variation: 33.9%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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.

Comment:

Clause 4.4 (Floor Space Ratio) is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 was considered by the Applicant. The

Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the proposed development against each objective of the FSR development standard, arguments that are generally concurred with, including:

- *The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.*
- *The contemporary building form with a low-profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.*
- *The modulation of the front façade, together with the retention of the existing side setbacks and complementary external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.*
- *The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in the area.*
- *The proposal will not see the loss of any significant vegetation. One tree is to be removed from the front yard to accommodate the new driveway and garage however the Landscape Plan prepared to support the development includes two additional trees within the front yard which will achieve a height of 15m and additional canopy trees for the rear yard. As the built footprint of the existing dwelling remains largely unchanged other than a slight increase at the ground floor level, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.*
- *The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged. The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.*
- *The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.*

(b) there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'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.'*

The Clause 4.6 Request argues, in part:

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

- The proposed alterations and additions introduce modulation and architectural relief to the building's facade, without seeing any substantial change to the building's bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings 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 additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Alma Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 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) of the EPA Act.*
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining a consistent ridge height, together with providing for internal lift access to improve the ability for the occupants to access the levels within the dwelling. (cl 1.3(g))."*

Planner Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act. It is also noted that the proposed development is also compliant with Part 4.1.3.1 (Exceptions to FSR for undersized lots) MDCP 2013 provision which allow for exceptions to the FSR provisions for undersized lots in which the subject site applies as the site has a site area of less than 750sqm (556.4sqm).
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the

relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances the proposed departure from the FSR development standard is acceptable and it is reasonable that flexibility to the standard be applied.