

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

Notice is hereby given that a Meeting of the Northern Beaches Local Planning Panel will be held in the Council Chambers, Civic Centre, Dee Why on

WEDNESDAY 4 APRIL 2018

Beginning at 1.00PM for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Brian Kirk	Town Planner
Robert Hussey	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 4 April 2018
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00PM**

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	Nil	
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	Nil	
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	Nil	

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 21 MARCH 2018

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 21 March 2018 were adopted by the Chairperson and have been posted on Council's website.

3.0 NORTHERN BEACHES LOCAL PLANNING PANEL REPORTS

ITEM 3.1 DA274/2017 - 128 PITTWATER ROAD, MANLY - ALTERATIONS
AND ADDITIONS TO THE EXISTING DWELLING HOUSE

REPORTING OFFICER Ben Price

TRIM FILE REF 2018/199161

ATTACHMENTS 1 [↓](#) Assessment Report
2 [↓](#) Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA274/2017 for Alterations and additions to the existing dwelling house at Lot 1 DP 74239, 128 Pittwater Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.



northern
beaches
council

Northern Beaches Local Planning Panel

2018/112890

DA #	DA274/2017
Site Address	128 Pittwater Road Manly
Proposal	Alterations and additions to the existing dwelling house
Officer	Ben Price

SUMMARY:

Application Lodged:	30 November 2017
Applicant:	Vaughan Milligan Development Consulting Pty Ltd
Owner:	Thomas Keith Sawyer
Estimated Cost:	\$200,000.00
Zoning:	MLEP, 2013 – R3 Medium Density Residential
Heritage:	Pittwater Road Conservation, I2 All Stone Kerb
Notification:	4 December 2017 – 18 December 2017
Submissions received:	3
Site Inspected:	13 February 2018
LEP (4.6) Variations proposed:	4.4 Floor Space Ratio
DCP Variations proposed:	4.1.3 Floor Space Ratio, 4.1.4 Setbacks (front side and rear) and Building Separation, 4.1.5 Open Space and Landscaping
Recommendation:	Approval

Subject Property and surrounding area



The subject property is commonly known as 128 Pittwater Road Manly and legally known as Lot 1 in DP 74239. The site is located on the eastern side of Pittwater Road. The property is rectangular in shape and has a frontage of 6.095m to Pittwater Road, an average depth of 35.35m and an overall site area of 215.4m². The property currently contains a single storey dwelling with no vehicular access. The property is generally level.

R1, R2, R3, E3 & E4 Zones

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The surrounding area predominantly consists of residential accommodation including one and two storey dwelling houses and semi-detached dwellings.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

There is no relevant history/background contained within Council's records system.

Description of proposed development

The proposal includes:

Ground Floor Level

- Alterations and additions to provide for new bathroom, internal access stairs to new first floor level, open plan kitchen, dining and family room

First Floor Level

- New first floor addition to provide for parents retreat and two bedrooms including master bedroom with ensuite, robe and balcony

External Works

- Removal of existing paving, new paving and new landscaping in front and rear yards

Internal Referrals**Engineering Comments**

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer has commented on the proposal as follows:

*"Further to a review of the available documents and site visit,
The site of proposed development is not a listed heritage item in its own right, however,
it is located in the heritage conservation area.
The proposal is for two storey additions, set back from the front.
In the context of narrow site, and given the front setback, the impact will be mitigated
and the proposed additions may be considered; however, it is recommended to replace
upper level gable facing the front with a sloping "hip" of the roof, in order to allow
additions to be obscured from Pittwater Road and to allow the house to still present as
single storey when viewed from this direction."*

Planning Comments

The proposed first floor addition is setback 9.47m from the front boundary and designed to minimise the overall height of the development. The proposed design is adequate to ensure the development maintains a single storey appearance on Pittwater road. The proposal is of an appropriate form and design to ensure it conserves both the environmental heritage of Manly and the significance of the building within the heritage conservation area. The modification of the roof form is not justified in this circumstance.

Waste Comments

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
(i) *any environmental planning instrument, and*

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

Manly Local Environmental Plan 2013

The subject site is located in Zone R3 Medium Density Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R3 Medium Density Residential

Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.*

The proposal will maintain the existing residential use of the site.

- To provide a variety of housing types within a medium density residential environment.*

The proposal will maintain the existing housing type and density on the site.

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

Not applicable

- To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposal is suitable to revitalize the existing building on the site.

- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	6.5m	Yes	The proposal complies with this clause.
4.4	Floor Space Ratio	0.6:1 129.24m ²	0.72:1 155.23m ²	No	See comments below.

4.6 Exceptions to development standards

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.6:1 129.24m ²
Proposed	0.72:1 155.23m ²
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	20%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 2013 are:

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

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

Comment: The proposed first floor addition is set to the rear and will not be visually prominent from the streetscape. The proposal will be of a bulk and scale that is consistent with the surrounding development.

(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,*

Comment: The proposal will not obscure any important landscape or townscape features.

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

Comment: The proposed development is appropriately designed to minimise the visual impact of the development on the existing character and landscape of the area.

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

Comment: The proposal will not result in any unreasonable environmental impacts on the use or enjoyment of the adjoining land or the public domain.

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

Comment: Not applicable

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of Zone R3 Medium Density Residential.

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposal will maintain the existing residential use of the site.

- *To provide a variety of housing types within a medium density residential environment.*

The proposal will maintain the existing housing type and density on the site.

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

Not applicable

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposal is suitable to revitalise the existing building on the site.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The requested degree of flexibility will not result in any unreasonable impacts within the locality. The requested flexibility is appropriate in the circumstances.

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

Comment: By allowing flexibility the proposal will maintain the amenity and character of the locality, achieving a greater floor area and a more functional dwelling house. The proposed flexibility will result in a better outcome in this circumstance.

(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.

(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.*

Comment: The application was accompanied by a written request to vary the development standard that provided the following justification to demonstrate compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention.

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

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the siting of the existing building.

Council's controls for a site within this locality seek a maximum FSR of 0.60:1, which on a site of 215.4m² permits a maximum total floor area of 129.24m². The new works will seek to provide for a total floor gross floor area of 161.38m² or 0.75:1.

The Objectives of the FSR control are addressed within MDCP Clause 4.1.3 and are noted as:

- Objective 1) To ensure the scale of development does not obscure important landscape features.
- Objective 2) To minimise disruption to views to adjacent and nearby development.
- Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As per Clause 4.1.3.1, an exception is permitted for undersized lots when the relevant LEP Objectives and the DCP controls are satisfied.

The site is within Area C under Council's LEP Lot Size mapping, which prescribes a minimum lot size of 250m².

When calculated for the required minimum lot size of 250m², the proposed FSR of 0.645:1 exceeds the control.

It is considered that the proposal achieves these objectives and that the development is justified in this instance for the following reasons:

- The new works will present only a marginal increase in floor area and will add positively to the building's articulation and visual balance, having regard for the existing roof form of the adjoining dwelling. As the building will maintain a favourable bulk and scale when compared to its neighbours and surrounding development, the proposal succeeds in maintaining a consistent and compatible scale and form and overall height with the character of other development.
- The proposed additions to the existing dwelling do not obscure any important landscape features nor do they unreasonably obstruct any significant views.
- The considered siting of habitable room windows will minimise direct overlooking of the adjoining neighbours.
- The proposed first floor addition is sited over the rear of the existing dwelling, and will therefore not be prominently viewed from Pittwater Road.
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.
- The bulk and scale of the new works is consistent with existing development in the locality.

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

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

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.6:1 for the subject development.

Due to the small lot size, the proposed new works will have a floor space ratio of 0.75:1, or 0.645:1 based on the minimum lot size control.

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

- *Compliance with the floor space ratio control is constrained by the extent of the existing building and small lot size.*
- *The proposed first floor addition is sited over the rear portion of the dwelling, and the development does not result in a significant bulk when viewed from either the street or the neighbouring properties.*
- *The development will maintain a compatible scale relationship with the existing residential development in the area, and will reflect a positive contribution to its streetscape.*
- *The extent of the proposed new works do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.*

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

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

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

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

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

environmental planning grounds to justify contravening the development standard." He held that this means:

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

Accordingly, in regards to the proposed development at 128 Pittwater Road, Manly, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

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

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

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

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

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

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

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

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

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

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

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

Comment: Not applicable.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be

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unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

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

- (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*

Comment: The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

- (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.*

Comment: For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013 and the objectives of the Clause 4.4 Floor Space Ratio development standard.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. In this regard, given the variation of 20% and the consistency of the variation with the objectives of the development standard and zone, the application is referred to the Northern Beaches Local Planning Panel with a recommendation of approval.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposed development is not a heritage item but is within the Pittwater Road Heritage Conservation area. The proposed first floor addition is 9.4m setback from the street and designed to minimise the overall height of the development. The proposed design is adequate to ensure the development maintain a single storey appearance on Pittwater road. The proposal is of an appropriate form and design to ensure it conserves the environmental heritage of Manly and the significance of the building within the heritage conservation area. The proposal is consistent with the objectives of this clause.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applie s	Complies	Comment
6.1	Acid Sulphate Soils	Yes	Yes	The proposal complies with this clause.
6.2	Earthworks	Yes	Yes	The proposal complies with this clause.
6.4	Stormwater Management	Yes	Yes	The proposal complies with this clause.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal complies with this clause.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

The proposed development does not include any fences, walls or carparking on the street frontage.

Objective 2) *To ensure development generally viewed from the street complements the identified streetscape.*

The proposed first floor addition is adequately designed to ensure it is not visually prominent from the streetscape. The proposed alterations and additions will maintain the character of the existing development on the site and will complement the streetscape of the locality.

Objective 3) *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

The proposal does not include any front walls or fences.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposed development is not a heritage item but is within the Pittwater Road Heritage Conservation area. The proposed first floor addition is setback from the street and designed to minimise the overall height of the development. The proposed design is adequate to ensure the development maintains a single storey appearance as viewed from Pittwater road. The proposal is of an appropriate form and design to ensure it conserves the environmental heritage of Manly and the significance of the building within the heritage conservation area.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

The proposed development is designed to ensure the proposed first floor is not prominent from the streetscape. The proposal will not result in any unreasonable impact on the significance of the locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposed first floor is setback from the street and designed to minimise the overall height of the development. The proposal is appropriately designed to ensure the development maintains the character of the existing dwelling on the site and does not detract from the significance of the item.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

The proposal is compatible with the surrounding character and visual context of the conservation area.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

This assessment has integrated heritage management and conservation into the planning development process.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposal will not result in any unreasonable overshadowing of the first floor windows of the neighbouring property and will not eliminate more than 1/3 of the existing sunlight accessing the private open spaces of the neighbouring properties. The shadow diagrams submitted with the application demonstrate the proposal will maintain an equitable access to light and sunshine within the locality.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposed development will allow adequate sunlight to penetrate the private open spaces of the development site and the neighbouring properties. The proposal will result in minor increase in overshadowing of the windows of 126 Pittwater Road. These windows will retain solar access

during the morning of the winter solstice. The proposal will ensure the living spaces/habitable rooms of the neighbouring property receives adequate solar access.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposal provides an increased southern setback to minimise the overshadowing impact on the property to the south. The proposal is adequately modulated to facilitate sunlight access.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed southern elevation includes one highlight window and a skylight. These will not result in any unreasonable overlooking of the neighbouring property.

The proposed deck includes obscured louvres on the northern and southern elevations. These are adequate restrict viewing and minimise loss of privacy to the private open spaces of 126 and 130 Pittwater Road Manly. The proposed deck is setback 7m from the rear boundary, is small with a depth of 1.65m and is attached to a bedroom, a typically lower use room. The proposed deck will not result in any unreasonable privacy impacts on the neighbouring properties.

The property to the north has a brick wall with minimal side boundary setback and no southern facing windows. The proposed doors on northern boundary are setback 1.8m from the side boundary. This setback is adequate to ensure no unreasonable visual or acoustic privacy impacts. The proposed courtyard is relatively small and will not result in any unreasonable acoustic privacy impacts and is not adjacent to any openings of the neighbouring property. The proposed northern elevation will not result in any unreasonable impacts on the privacy of the property to the north.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposed development is adequately designed to maintain the privacy of the neighbouring properties without compromising access to light and air. The proposal will achieve a balanced outlook from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

The proposal will maintain the sites existing awareness of neighbourhood security.

Part 4 - Development Controls

Site Area:	215.4m ²	Permitted/ Required	Proposed	Complies Yes/No
Wall height	North side	6.5m	5.2m	Yes
	South side	6.5m	5.2m	Yes
Number of Storeys		2	2	Yes
Roof height		Max. 2.5m	1.4m	Yes
Setback Front		Streetscape 1.8m	Ground Floor 1.96m First Floor 9.4m	Yes
North setback side		Ground Floor 1.1m First Floor 1.7m	Ground Floor 1m First Floor 1m - 0.9m	No

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Site Area:	215.4m ²	Permitted/ Required	Proposed	Complies Yes/No
South setback side		Ground Floor 1.2m First Floor 1.7m	Ground Floor 170mm- 310mm First Floor 1.448m	No
Wall on boundary height		3m	2.87m	Yes
Wall on boundary length		35% of boundary 12.3m	Existing 24.6m	No
Setback Rear		8.0m	7.1m	No
Open space - total		Min. 55% of Site Area (118.47m ²)	32% (69.125m ²)	No
Open space - landscaped		Min. 35% of Total Open Space (24.19m ²)	54% (37.9m ²)	Yes
Open space - above ground		Max. 25% of Total Open Space (17.28m ²)	5m ²	Yes
Number of Endemic Trees		1	0	No
Private Open Space		18m ²	43.23m ²	Yes
Car Parking – Residents		2 spaces	No existing parking on the site	No proposed change.

Comment:

4.1.3 Floor Space Ratio (FSR)

Objective 1) To ensure the scale of development does not obscure important landscape features.
The proposal is appropriately designed and sited to ensure it does not obscure any important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

The proposal is designed to ensure it is not visually prominent from the streetscape. The proposal will not result in any unreasonable impacts on views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

The proposal has been assessed above with regard to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. The proposal was found to allow adequate sunlight to penetrate both private open spaces and windows to living spaces of the development site and neighbouring properties.

4.1.4 Setbacks (front, side and rear) and Building Separation

Objective 1) 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.

The proposal will maintain the existing ground floor setback to the street. This setback is consistent with the surrounding development. The first floor includes a 9.4m setback from the street. The front setback to the first floor is adequate to ensure the development maintains the character of the streetscape and is not visually prominent. The proposal will maintain the spatial proportions of the street, street edge and landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- providing privacy;
- providing equitable access to light, sunshine and air movement; and
- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.

- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

The proposal was assessed in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to achieve adequate privacy.

The proposal has been assessed above with regard to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. The proposal was found to ensure an equitable access to light sunshine and air movement within the locality.

The proposal will not result in any unreasonable impacts on views within the locality and will maintain the existing space between the buildings.

The proposal will not impact traffic conditions within the locality.

Objective 3) To promote flexibility in the siting of buildings.

The proposed flexibility will not result in any unreasonable impacts and will maintain the character of the locality. The proposed flexibility is adequate in this circumstance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposal includes the removal of the existing paving and replacement with gardens and lawn. The proposal will enhance the natural features of the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Not applicable

4.1.5 Open Space and Landscaping

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

The proposal does not include the removal of any important landscape features. The proposal includes the removal of the existing paving and replacement with gardens and lawn. The proposal will augment the landscape features of the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

The existing site currently has no soft landscaped area. The proposal will provide 37.9m² of soft landscaped area. The proposed is compliant with the above ground open space control. The proposal will maintain the existing total open space of the site.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

The proposal subject to the recommended conditions of consent is adequately designed to maintain the amenity of the site, streetscape and the surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

The proposal will remove the hard paved areas and replace with lawns and gardens. The proposal will increase the water infiltration on the site and minimise the stormwater run-off.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

The proposal will not result in the spread of weeds or the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

The proposal will increase the landscaped areas on the site.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓	
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

5.2 Pittwater Road Conservation Area

The proposal is within the Pittwater road conservation area. An assessment of the proposal with regard to Clause 5.2.2 has been conducted below:

In relation to development fronting Pittwater Road, Council must be satisfied that DAs will not:

a) adversely affect the amenity of the locality;

The proposal has been assessed with regard to Clause 3.4.1 Sunlight Access and Overshadowing and Clause 3.4.2 Privacy and Security. In summary the assessment found that the proposal will maintain the amenity within the locality.

b) result in excessive vehicular movements to and from the site or in adjacent residential streets;

The existing site does not have vehicular access and the proposal does not include the provision of any vehicular access.

c) involve signage or other non-structural change in the appearance of the exterior of the building that is inconsistent with the preservation or restoration of the heritage streetscape in the vicinity;

The proposal does not include any signage. The proposed alteration to the eaves to the front of the building will maintain the heritage significance of the site and will not result in any unreasonable impacts on the streetscape in the vicinity.

d) change in the appearance of the exterior of a building without being in keeping with the preservation or restoration of the heritage streetscape.

The proposed first floor addition is adequately setback from the street to ensure the site retains a single storey appearance to the street frontage. The proposed alterations and additions will limit the change in the appearance of the building and will maintain a structure that is in keeping with the Pittwater Road Conservation Area.

5.4 Foreshore Scenic Protection Area

The proposal is consistent with the additional matters for consideration within Clause 5.4 Foreshore Scenic Protection Area of the Manly DCP 2013.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No applicable planning agreements.

79C(1)(a) (iv) - the regulations

The proposal

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will not result in any unreasonable environmental impacts on the natural or built environments. The proposal will not result in any unreasonable social or economic impacts on the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed development is suitable for the subject site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 3 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Bateman 126 Pittwater Road	<ul style="list-style-type: none"> Privacy due to rear balcony. Loss of privacy due to window 10 Sunlight access 	<ul style="list-style-type: none"> The proposed deck is attached to a bedroom and is small in size. The southern elevation of the deck is screened by obscured glass louvres that open 50mm. The deck is adequately designed to ensure no unreasonable privacy impacts to the neighbouring properties. The window W10 is 300mm in height and is a highlight window. This windows will not result in any unreasonable overlooking. The proposal has been assessed above in accordance with Clause 3.4.1 Sunlight Access and Overshadowing and was found to maintain an equitable access to light and sunshine within the locality.

2. Ruzicka 3/77 Whistler Street Manly	<ul style="list-style-type: none"> Privacy Visual effect of suggested Juliette Balcony 	<ul style="list-style-type: none"> The proposal has been assessed above with regard to Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to achieve an adequate level of privacy. The proposed first floor balcony is adequately setback from the rear boundary to ensure no significant visual effect on the neighbouring properties. The privacy of the proposal has been assessed above and was found to be satisfactory.
3. Boys and Digby 75 Whistler Street Manly	<ul style="list-style-type: none"> Visual and acoustic Privacy 	<ul style="list-style-type: none"> The proposal has been assessed above with regard to Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to achieve an adequate level of privacy.

79C(1) (e) - the public interest.

The proposal is consistent with the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*
 - (b) the payment of a monetary contribution, or both.*
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, no S94 contributions are applicable.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 274/2017 for Alterations and additions to the existing dwelling house at 128 Pittwater Road Manly be **approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 274/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
Site Analysis	N/A	Pacific Plans
Sheet 1 Proposed Alterations and Additions	Revision A, dated August 2017	Pacific Plans
Sheet 2 Proposed Alterations and Additions	Revision A, dated August 2017	Pacific Plans

Reference Documentation relating to Development Consent No. 274/2017:

- BASIX Certificate Number A292149, prepared by Deneb Design and dated 5 September 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

ANS01

Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

3 (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

5 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

6 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

7 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

8 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

9 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

11 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.

- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

12 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

13 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

14 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

15 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

ANS02

Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

16 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

17 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.

SITE ANALYSIS

NOTE: NO SIGNIFICANT VIEWS.

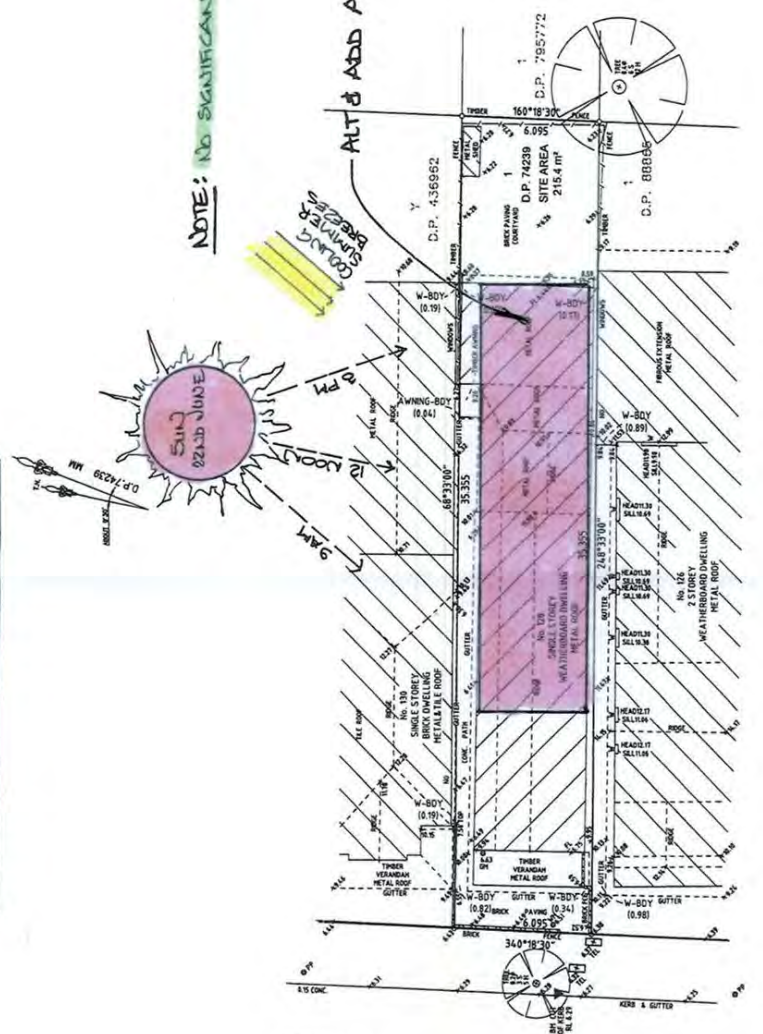
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DATE OF SURVEY: 19-05-2017	ISSUE: 0 SHEET: A1 OF 1	

	DATE	BY	REASON	ISSUE
CLIENT:	AUSTIN PATTENBERGER			MR. J. SAWYER

NOTES:

1. GROUND OF LEVELS: PM 820, RM 6,000 (LAND) [SOURCE: SCALE, AS AT 21 MAY 2017].
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ITEM 3.2	DA268/2017 - 53 SMITH STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI-DETACHED DWELLING
REPORTING OFFICER	Ben Price
TRIM FILE REF	2018/199225
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA268/2017 for Alterations and additions to the existing semi-detached dwelling at Lot 121 DP 582499, 53 Smith Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.



northern
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council

Northern Beaches Local Planning Panel

2018/117415

DA #	268/2017
Site Address	53 Smith Street, Manly; Lot 121 DP582499
Proposal	Alterations and additions to the existing semi-detached dwelling
Officer	Ben Price

SUMMARY:

Application Lodged:	24 November 2017
Applicant:	Playoust Churcher Architects
Owner:	Timothy MacDermid
Estimated Cost:	\$486,000
Zoning:	MLEP, 2013 – R1 General Residential
Heritage:	The Pittwater Road Conservation Area and Adjacent to I223 Street Trees
NSW LEC:	Not applicable
Notification:	29 November 2017 – 15 December 2017
Submissions received:	1
Site Inspected:	1 February 2018
LEP (4.6) Variations proposed:	4.4 Floor Space Ratio
DCP Variations proposed:	4.1.3 Floor Space Ratio, 4.1.4 Setbacks (front, side and rear) and Building Separation, 4.1.5 Open Space and Landscaping, 4.1.10 Fencing
Recommendation:	Approval

Subject Property and surrounding area



The subject property is commonly known as 53 Smith Street Manly and legally known as Lot 121 in DP 582499. The site is located on the Western side of Smith Street. The property is generally rectangular in shape and has a frontage of 6.3 m to Smith Street and a frontage of 5.99m to Collingwood Street. The site has a depth of 39.24m and an overall site area of 238m². The property currently contains a single storey dwelling with vehicular access via an existing driveway from Collingwood Street to an existing hardstand to the rear of the existing dwelling. The property is generally flat.

The surrounding area predominantly consists of residential accommodation and includes dwelling houses and semi-detached dwellings. The area is characterised by the Pittwater Road Conservation Area.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

The following applications are relevant to the site history:

Pre-Lodgement Meeting – A Pre-Lodgement meeting was held on the 23 May 2017 for a proposal similar to this application. The minutes conclude that the submitted plans may be recommended for approval subject to further privacy treatments.

DA194/1999 – Alterations and additions to dwelling and carspace.

Description of proposed development

The proposal includes:

Ground Floor Level

- Internal reconfiguration of the existing ground floor plan and demolition of internal walls and roof above the rear section of the dwelling.
- Reconfiguration of the westernmost bedroom and bathroom to create one large bathroom with a built-in laundry.
- Provision of stairs to the proposed first floor level.
- Reconfiguration of the rear half of the existing ground floor level to create open plan kitchen, dining and family spaces.
- New windows to the northern elevation and brick up existing windows proposed to be removed.
- Demolition of the store room and deck.

New First Floor Level

- Master bedroom and balcony, bathroom, sitting room, stairs from the ground floor level and circulation space.
- Provision of 1.65 metre high privacy screening to the northern and southern ends of the balcony.
- Non-trafficable roof garden. A full length north facing window will be provided to the sitting room to facilitate access to the roof garden for maintenance only.
- New windows in the northern, eastern and western elevations.
- New skylights above the ground floor level entry hall and bathroom.

Private Open Space and Parking

- No tree removal is proposed.
- The existing paved parking area is proposed to be “squared off” to accommodate parking for two vehicles.
- Part of the existing rear paling fence and gate is proposed to be demolished and replaced with new stacking sliding gates.

Internal Referrals**Heritage Comments**

Council's Heritage Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
(i) *any environmental planning instrument, and*

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

Satisfactory

Manly Local Environmental Plan 2013

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R1 General Residential

Objectives of zone

- *To provide for the housing needs of the community.*
The proposal will maintain the residential use of the site.
- *To provide for a variety of housing types and densities.*
The proposal will maintain the existing density on the site.
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
Not applicable

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	7.7m	Yes	The proposal complies with this clause.
4.4	Floor Space Ratio	0.6:1 142.8m ²	0.69:1 166.26m ²	No	See comments

4.6 Exceptions to development standards

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.6:1 142.8m ²
Proposed	0.69:1 166.26m ²
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical

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If numerical enter a % variation to requirement	16.4%
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The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 2013 are:

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

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

Comment: The proposed first floor addition is set to the Collingwood Street frontage of the site and will maintain the appearance of the site as viewed from Smith Street. The proposal will be visible from the frontage to Collingwood Street. However, the proposal is consistent with the surrounding development within Collingwood Street, in particular 14 Collingwood Street. The proposal as viewed from Collingwood Street is consistent with the streetscape character.

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

Comment: The proposal is of a density and bulk that is consistent with the neighbouring properties and will not obscure any important landscape or townscape features.

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

Comment: The proposed addition will complement the existing built form and maintain the frontage to Smith Street within the heritage conservation area. The proposed frontage to Collingwood Street is consistent with surrounding development. The proposal will maintain the existing character of the locality.

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

Comment: The proposal will not result in any unreasonable environmental impacts on adjoining land and the public domain.

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

Comment: Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential:

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

The proposal will maintain the residential use of the site.

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

The proposal will maintain the existing density on the site.

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

Not applicable

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The proposed floor space ratio will not result in any unreasonable impacts to locality and is consistent with the surrounding development. The proposal will maintain the character of the area and the requested degree of flexibility is considered appropriate in the circumstances.

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

Comment: While proposal will achieve a greater floor area while ensuring no unreasonable impacts on the surroundings. The proposal will achieve a better outcome from the development.

(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.

(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.*

Comment:

The proposal was accompanied by an application in accordance with Clause 4.6 which provided the following reasons to demonstrate compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard:

"Compliance with Clause 4.4(2) of MLEP 2013 is considered to be unreasonable and unnecessary in the circumstances of the proposed development based on the following environmental planning grounds:

- *The residential site is suitably located in the vicinity of services available throughout the Manly town centre and has rear lane access via Collingwood Street.*
- *The proposed development will provide additional floor area for the existing semidetached dwelling without adversely impacting upon the amenity of adjoining properties and is considered to be visually compatible with surrounding development.*

- *The proposed alterations and additions are modest in scale and have been designed to complement the federation character of the existing semi-detached dwelling and to appear visually in keeping with the first floor addition on the property to the north.*
- *Notwithstanding the FSR non-compliance, the proposed alterations and additions to No. 53 Smith Street, Manly have been sensitively designed to be visually consistent with the character and built form of the Pittwater Road Conservation Area. Furthermore, the proposed first floor addition has been generously setback from the front site boundary behind the front roof form and gable (in the order to 15 metres) so as to minimise its visibility from the Smith Street streetscape (the primary frontage).*
- *By virtue of the thorough site context planning that has informed the design process, the proposal is not a development that will give rise to adverse bulk and scale impacts on surrounding properties or public domain spaces or compromise the low density residential environment of the locality.*
- *The proposed floor space can be comfortably accommodated on the site without bulk and scale implications rendering the built form out of character with the Smith Street streetscape.*
- *The proposed GFA will improve the functionality and amenity of the dwelling as a family home in a modest sense without representing an excessive floor plan and layout or overdevelopment of the subject site. In this regard, the proposed alterations and additions will be contained within the existing building footprint and will not materially reduce existing site landscaping.*
- *The proposed variation to Council's maximum permissible FSR will not be discernible to anyone walking or driving along the public domain of Smith Street and Collingwood Street nor will it be out of character with the bulk and scale of the surrounding built form. In this regard, it will not be visually obvious from either the streetscape or surrounding homes. Accordingly, despite the departure from the maximum permissible FSR, the site is considered capable of accommodating the extent of development proposed.*
- *The proposal has been designed having regard for the site context, constraints and characteristics to ensure that the bulk and scale of the resultant built form will be compatible with the subject site, the surrounding dwellings and the Smith Street streetscape. The proposed variation to the maximum FSR development standard will not in this instance compromise the design and standard of the development.*
- *The proposed development has been designed in such a way that the departure from Council's maximum permissible FSR will not give rise to adverse amenity impacts on neighbouring properties.*
- *The variation to the floor space ratio is inconsequential as it will have no detrimental impact on the streetscape or the amenity of neighbouring properties. It would be unreasonable for Council to require compliance with the maximum FSR development standard given that the proposed design will not materially impact adjoining properties, particularly with regard to visual and acoustic privacy, solar access, bulk and scale. The proposed design also provides an acceptable level of functionality and amenity for the occupants of the subject dwelling.*

- *Despite the non-compliance with Council's FSR development standard, the proposed built form has been designed to comply with the intent and objectives of the control, being to ensure the bulk and scale of development is consistent with the existing and desired streetscape character, to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features, to maintain an appropriate visual relationship between new development and the existing character and landscape of the area and to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.*
- *Strict compliance with the numeric controls in this case would adversely impact upon the development potential of the site and the ability to improve the functionality and amenity of the dwelling as a family home.*
- *Strict compliance with the development standard in Clause 4.4(2) would render the application inconsistent with the objects specified in Section 5(a)(i) and (ii) of the*
- *Environmental Planning and Assessment Act 1979 because the site will remain under developed. Approval of the proposed variation to the development standard in conjunction with proper management will enable the site to be developed to its full potential consistent with the objective to facilitate the orderly and economic use and development of land.*

A review of Council's Development Approval register reveals that Council has approved numerous recent Clause 4.6 variation requests in relation to non-compliance with the FSR development standard for alterations and additions to existing semi-detached dwellings in Smith

Street, Manly. Indeed, the pre-DA meeting minutes issued by Council advise as follows:

"Given the existing context of the site and surrounding existing developments, the variation to the Floor Space Ratio development standard can be supported subject to an Application Form to Vary a Development Standard, adequately justifying the variation of the floor space ratio development standard."

For the above reasons, compliance with Council's maximum permissible floor space ratio development standard is considered unreasonable and unnecessary in the circumstances.

Furthermore, in light of the particular site circumstances detailed above, sufficient environmental planning grounds exist to justify approval of the non-compliance. While clause 4.6 requires the applicant to prove only that the variation is either unreasonable or unnecessary, it is clear from the assessment provided above that both of these tests are satisfied."

- (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*

Comment: The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

- (iii) *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.*

Comment: For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

- (b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. In this regard, given the variation of 16.4% and the proposals consistency with the objectives of the development standard and the zone, the application is referred to the Northern Beaches Local Planning Panel with a recommendation of approval.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposal complies with this clause.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.1	Acid Sulphate Soils	Yes	Yes	The proposal complies with this clause.
6.4	Stormwater Management	Yes	Yes	The proposal complies with this clause.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

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Comment:

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposal does not include any front walls or fences on the Smith Street Frontage. The proposal includes replacement of the existing front fence and widening of the parking area on the Collingwood Street frontage. A dominant feature of Collingwood Street is high front fences and gates. The proposed fence and gate are consistent with the streetscape and will not result in any unreasonable impacts to the locality. The proposed car parking will be concealed by the front fence and will not result in any unreasonable impacts to the streetscape.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed first floor addition is setback from Smith Street to ensure the proposal does not impact the frontage to the heritage conservation area. The proposal as viewed from Smith Street will complement the streetscape within the locality. The proposal will maintain an adequate setback from Collingwood Street to ensure it does not impose on the streetscape. There are also a number of examples of similar development within Collingwood Street. The proposal as viewed from Collingwood Street will be consistent with the surrounding development in particular 14 Collingwood Street. The proposal as viewed from the street will complement the identified streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

The proposed fencing will maintain the existing character of the area.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposal is appropriately designed to conserve the environmental and cultural significance of Manly.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

The proposed addition is set towards the Collingwood Street frontage and will retain the significance of the site as viewed from Smith Street. The proposal is of an appropriate design to ensure it does not adversely impact on the significance of the locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposal is of an appropriate form and design so as not to detract from the significance of the conservation area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

The proposal is compatible with the surrounding character.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

The proposal has been assessed by Councils Heritage officer and was found to be satisfactory.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The additional overshadowing from the development will mostly fall on the roof of the neighbouring property at 51 Smith Street. The proposal will not result in any unreasonable overshadowing within the locality and will maintain equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposal will predominantly overshadow the roof of the neighbouring property at 51 Smith Street. The proposal will not eliminate more than 1/3 of the existing sunlight accessing the private open space of the neighbouring properties nor will it result in any unreasonable overshadowing of windows to living spaces/habitable rooms of both the development and adjoining properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposal is adequately designed to maximise the penetration of sunlight to the windows living rooms and principal outdoor areas. The southern side is the party wall shared with 51 Smith Street. The proposal will not result in any unreasonable overshadowing of the property to the south.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed windows on the ground floor of the northern elevation are adequately positioned to ensure no unreasonable overlooking of neighbouring windows. The proposed first floor windows on the northern elevation are identified as frosted to a height of 1.65m above the finished floor level. The proposed treatment is adequate to ensure no unreasonable overlooking of the neighbouring property. The proposed first floor deck includes a 1.65m privacy screen on the northern and southern elevations. The privacy screen is adequate to minimise the loss of privacy. The proposed rooftop garden could present a privacy impact if it were to be used as a balcony. A condition of consent is recommended that the proposed rooftop garden be non-trafficable. The recommended condition is adequate to ensure the privacy of the neighbouring properties. The proposed ground floor deck will replace the existing deck and will not result in any additional privacy impacts. The proposed development as modified by the recommended conditions of consent is of an appropriate form and design to minimise the loss of privacy to adjacent and nearby development.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposal is adequately designed to minimise privacy without compromising access to light and air. The proposal will also achieve a balanced outlook and views from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

The proposal will create good passive surveillance of the streetscape and encourage an awareness of neighbourhood security.

Part 4 - Development Controls

Site Area:	238m ²	Permitted/ Required	Proposed	Complies Yes/No
Wall height North side		6.5m	6.1m	Yes
Number of Storeys		2	2	Yes
Roof height		Max. 2.5m	1.3m	Yes
Floor Space Ratio		Max. GFA 150m ²	166.26m ²	No
Setback Front		6.0m	Smith Street Existing 4.646m-6m Collingwood Street 5.974	No
North setback side		2m	1.27m	No
Wall on boundary height		3m	6.5m	No
Wall on boundary length		35% boundary 14.245m	70% 28.651m	No
Open space - total		Min. 55% of Site Area (130.9m ²)	20% (48.7m ²)	No
Open space - landscaped		Min. 35% of Total Open Space (17.1m ²)	52% (25.4m ²)	Yes
Open space - above ground		Max. 40% of Total Open Space (19.48m ²)	19% (9.6m ²)	Yes
Number of Endemic Trees		1	0	No
Private Open Space		18m ²	0m ²	No, rear ground floor deck does not meet minimum dimensions.
Car Parking – Residents		2 spaces	1 Space	No further non- compliance.
Fence		1.5m 30% Transparent above 1m	1.8m	No, see assessment under Clause 3.1 Streetscape.

Comment:

4.1.3 Floor Space Ratio (FSR)

The proposal is not compliant with the floor space ratio for the site as prescribed by this clause. An assessment of the proposal with regard to the objectives of the control has been conducted below.

Objective 1) To ensure the scale of development does not obscure important landscape features.
The proposal is of a scale that is consistent with the streetscape and will not obscure any important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

The proposal will not result in any unreasonable impacts on views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

The proposal will not result in any unreasonable overshadowing of the neighbouring properties and will maintain access to sunlight throughout the day during the winter solstice.

4.1.4 Setbacks (front, side and rear) and Building Separation

The proposal is not compliant with the front and side setback controls of the Manly DCP 2013. An assessment of the proposal with regard to the objectives of the control has been conducted below.

Objective 1) 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.

The proposed front setback to Collingwood Street is consistent with the setbacks of the neighbouring properties and will not result in any unreasonable impacts to the streetscape character of the locality. The proposal provides adequate setbacks to maintain the streetscape of the area.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

The proposal was assessed above in accordance with the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the proposal was found to be adequately designed to limit overlooking of the neighbouring properties and ensure privacy within the locality.

The proposal was assessed above in accordance with the objectives of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. In summary the assessment found the proposal will retain an equitable access to light and sunshine within the locality.

The proposal will not result in any unreasonable impacts on views, vistas or the pattern of spaces between buildings.

The proposal will not result in any unreasonable impacts on traffic conditions within the locality.

The proposed development is adequately designed to maintain and enhance local amenity.

Objective 3) To promote flexibility in the siting of buildings.

The proposed flexibility will not result in any unreasonable impacts in the locality. The flexibility is appropriate in this circumstance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposal will maintain the existing landscaped area on the site and will maintain the natural features of the site.

Objective 5) To assist in appropriate bush fire asset protection zones.
Not applicable

4.1.5 Open Space and Landscaping

The proposed ground floor deck has a depth of 2.85m and does not meet the minimum dimensions to be included as total open space. The proposal will remain non-compliant with the Total Open Space Control. An assessment of the non-compliance with regard to the objectives of the control was conducted below.

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

The proposal will maintain the existing landscaped features on the site

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

The proposal provides compliant soft landscaped area and provides adequate open space at ground level. The proposed ground floor deck has a dimension of 2.85mx5.9m and is attached to the living areas of the dwelling. The proposed ground floor deck will provide adequate principal private open space for the dwelling. The proposal does not include the removal of any significant landscaping and does not warrant further tree planting.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

The proposal has been assessed above in accordance with Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the Manly DCP 2013. The assessment found that the proposal will maintain the amenity of the locality. The proposal has also been assessed in accordance with Clause 3.1 Streetscape and was found to be consistent with the objectives of the control.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

The proposal will maintain the existing landscaped area and has been appropriately conditioned to ensure stormwater run-off is appropriately disposed.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

The proposal will not result in the spread of weeds or the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

The proposal does not include the removal of any wildlife habitat or wildlife corridors.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓	
Foreshore Scenic Protection Area		✓
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposal was assessed by Councils Heritage Officer and was found to be consistent with Clause 5.2 Pittwater Road Conservation Area of the Manly DCP 2013.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
Not applicable

79C(1)(a) (iv) - the regulations

The proposal is consistent with the applicable regulations.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will not result in any unreasonable impacts on the natural or built environments nor will it result in any unreasonable social or economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposal is suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 1 submission received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Green B & J 55 Smith Street	<ul style="list-style-type: none"> The notification plans show a large rear deck on the upper story approximately 2.85M deep which overlooks our backyard. A deck of the size is an entertaining area. It is inappropriate to have an entertaining deck of this size overlooking our backyard and main entertaining area which I note is at ground level. The large depth of this deck also impact the privacy screens which need to be 2.85 deep to afford any privacy. This increases the scale and overall development which will "loom" over our backyard and ground floor entertaining area at it extends some 6m past the rear wall of our house -all at 2 stories. There is plenty of precedent for upper balconies in such situations being restricted to under 1m, as has been required in our property 	<ul style="list-style-type: none"> The proposed deck has been assessed above in accordance with Clause 3.4.2 Privacy and Security of the Manly DCP 2013. In summary the assessment found the deck would not result in any unreasonable overlooking of neighbouring properties. The bulk and scale of the proposal is consistent with the surrounding development. The proposal has been assessed with regard to the objectives of Clause 4.4 Floor Space Ratio of the Manly LEP 2013 and the bulk and scale was found to be satisfactory. A condition of consent to limit the size of the deck is not justified in this circumstance.

14 of 21

	<p>no 55 Smith Street. We believe the upper floor balcony should be restricted to under one metre depth which would address our privacy concerns and reduce the scale of a building which already is over floor space ratios and does not have any additional setback for the proposed new upper story.</p> <ul style="list-style-type: none"> We note that the proposed upper story does is constructed immediately above the existing northern wall of the existing lower story and that this upper story extends some 5-6 metres west past the rear wall of our home. This creates an unnecessary scale impact with the building "looming:" over our rear backyard and main entertaining area on the ground floor. We note the upper story development of our property has the upper story stepped in from the lower story wall in order to reduce the impact on 53 Smith Street. The DA268/2017 shows our property no such courtesy. This is despite the fact that the impact on our property is far greater due to the fact that No. 53 extends some 6metres further West of our rear wall and so the development "looms" over our backyard. We believe this is unnecessary and that the upper story could and should be stepped in in the same way our upper story does. 	<ul style="list-style-type: none"> The proposed setbacks have been assessed above in accordance with the objectives of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation. In summary the assessment found the setbacks to be consistent with the objectives.
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79C(1) (e) - the public interest.

The proposal is consistent with the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) the dedication of land free of cost, or*

- (b) the payment of a monetary contribution, or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

Comments:

In this case, no S94 contributions are applicable.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 268/2017 for alterations and additions to the existing semi-detached dwelling at 53 Smith Street Manly be **approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 268/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA100 Site Analysis and Site Plan, Basix Commitments and Site Photos	Revision A, dated 17 November 2017	Playoust Churcher Architects
DA101 Ground and First Floor Plan	Revision A, dated 17 November 2017	Playoust Churcher Architects
DA200 Elevations and Sections	Revision A, dated 17 November 2017	Playoust Churcher Architects

Reference Documentation relating to Development Consent No. 268/2017:

- BASIX Certificate prepared by Playoust Churcher Architects dated 29 January 2018.
- Heritage Impact Statement prepared by Wayne McPhee Architect and Heritage Consultant and dated 7 November 2017.

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

ANS01

The Roof Garden is to be non-trafficable. Amended plans detailing compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To minimise the loss of privacy of the neighbouring properties.

ANS02

Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

3 (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

4 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

5 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

6 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

7 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

8 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

ANS03

Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: To ensure Public Safety.

9 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.

- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

10 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

11 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

12 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

ANS04

Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

13 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.



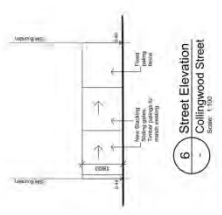
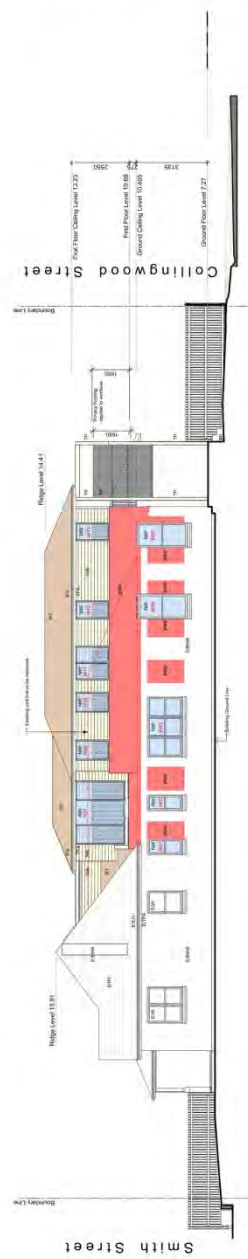
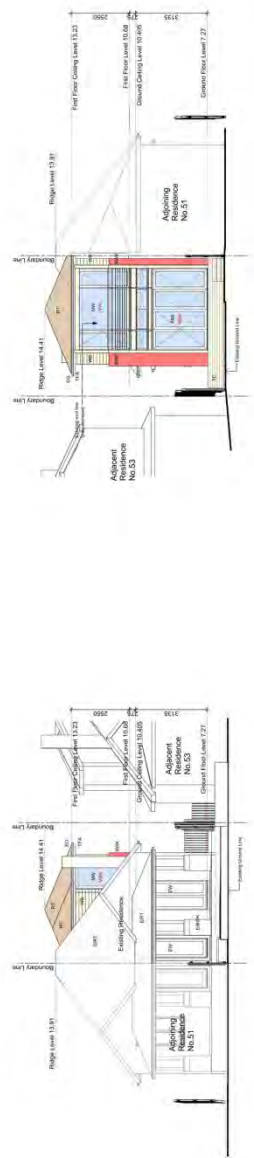
Alterations & Additions to Existing Residence					
53 Smith Street, Manly					
PROJECT A	DATE Nov 17	ISSUED FOR DA			
NOTIFICATION NUMBER					
NOTIFICATION PLAN					
TYPE	DATE	COMMENTS #	REASON		
1000000	Nov 2017	K10	A		
1000000	1/200	NTS	A		

GENERAL LEGEND

E-1 External Wall - 1/2" x 4" x 8" (to be added)
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 E-99 External Wall - 1/2" x 4" x 8" (to be added)
 E-100 External Wall - 1/2" x 4" x 8" (to be added)

Colour & Finishes Legend

Roof Tiles (RT)
 To match existing
 Metal Deck Roofing (MRC)
 Gutters (EG) and downpipes (DP)
 To match existing
 Brick Face
 To match existing
 Weatherboards (TC)
 Paint Finish Dark Grey Filler
 Deck & Pergola Structure
 To match existing
 Windows, Frames
 Soffits and Balustrades
 Paint Finish Dark Grey Filler
 To match existing



MacDermid Musgrove Residence
 53 Smith Street,
 Manly NSW 2100

Mr T. MacDermid & Mrs S. Musgrove

DA 200 A

PLAYOUT CHURCHER

DEVELOPMENT APPLICATION

DA 200 A

PLAYOUT CHURCHER

DEVELOPMENT APPLICATION

ITEM 3.3	DA251/2017 - 57 SMITH STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI-DETACHED DWELLING
REPORTING OFFICER	Claire Ryan
TRIM FILE REF	2018/199262
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA251/2017 for Alterations and additions to the existing semi-detached dwelling at Lot 131 DP 603177, 57 Smith Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.



northern
beaches
council

Northern Beaches Local Planning Panel Report

2017/535953

DA #	251/2017
Site Address	57 Smith Street, Manly Lot 131 DP 603177
Proposal	Alterations and additions to the existing semi-detached dwelling
Officer	Claire Ryan

SUMMARY:

Application Lodged:

3 November 2017

Applicant:

Paul and Olivia Rybicki

Owner:

Paul and Olivia Rybicki

Estimated Cost:

\$720,000

Zoning:

MLEP, 2013 – R1 General Residential

Heritage:

Pittwater Road Conservation Area, and adjacent to Item 223
Street Trees

NSW LEC:

Not applicable

Notification:

6-22 November 2017

Submissions received:

One

Site Inspected:

22 December 2017

LEP (4.6) Variations proposed:

Floor Space Ratio

DCP Variations proposed:

Side Setback North, Wall on Boundary Height and Length,
Number of Endemic Trees

Recommendation:

Approval

Subject Property and surrounding area



R1, R2, R3, E3 & E4 Zones

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The subject property is commonly known as 57 Smith Street, Manly and legally known as Lot 131 in DP 603177. The site is located on the western side of Smith Street. The property is irregular in shape, has a frontage of 8.815m to Smith Street, 34.46m to Alexander Street and 5.88m to Collingwood Street, an average depth of 34.46m and an overall site area of 231.9m². The property currently contains a single-storey semi-detached dwelling with vehicular access via an existing driveway from Alexander Street to an existing hardstand area to the rear of the existing dwelling. The property is level.

The adjacent property to the south, at 55 Smith Street, is developed with a two-storey semi-detached dwelling. nos. 55 and 57 Smith Street share a common wall. Development in this area consists of one- and two-storey detached and semi-detached dwellings.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

Recent relevant applications on site include:

DA85/2013: Alterations and additions to an existing dwelling including changes to windows, bi-fold doors, raise the height of the existing deck, planter boxes and front fence. Approved under delegation on 12 July 2013.

DA85/2013 – Part 2: Section 96 to modify approved Alterations and additions to an existing dwelling including changes to the windows, bi-fold doors, raise the heights of the existing deck, planter boxes and front fence – involving modifications to convert front fence to a solid fence. Approved by DAU on 5 November 2014.

Description of proposed development

The proposal seeks consent for the following works:

- Ground floor reconfiguration; and
- First floor addition.

Internal Referrals

Heritage Comments

Council's Heritage Officer has commented on the proposal as follows:

"The site of proposed development is not a listed heritage item in its own right, however, it is located in the Pittwater Road heritage conservation area and in vicinity of heritage items.

The proposal was subject to a series of meetings between the owners, their architects, and the council planners and heritage adviser. The current form of the proposal is the architect's interpretation of the advice given, and it presents a fair compromise between the relatively difficult site, heritage constraints, and his own creativity.

On balance, and as somewhat of a special case, I am of opinion that, assessed from heritage aspect, this proposal should be approved, noting however that it will be a test case for future modern additions in the Pittwater Road conservation area."

External Referrals

AUSGRID

The proposal was referred to Ausgrid. No comments had been received by Council at the time of writing this report.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
(i) *any environmental planning instrument, and*

Manly Local Environmental Plan 2013

The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R1 General Residential

Objectives of zone

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

The proposed development retains the residential use of the site.

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

The proposed development maintains the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed development retains the residential use of the site.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	7.67m	Yes	-
4.4	Floor Space Ratio	0.6:1 139.14m ²	0.696:1 161.5m ²	No	See comment below.

4.6 Exceptions to development standards

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	0.6:1 (139.14sqm)
Proposed	0.696:1 (161.5sqm)
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	16%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 2013 are:

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

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

Comment: The proposed development results in a bulk and scale comparable to existing developments in the streetscape. The proposed first floor addition is adequately set back from each boundary, in order to reduce the visual impact of the development on the streetscape.

- (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,*

Comment: The proposed development does not unreasonably obscure any important landscape or townscape features.

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

Comment: The proposed development has been designed to provide an appropriate visual relationship between the new development and the existing character and landscape of the area. The proposed first floor addition is adequately set behind the ridge line of the existing roof, and is also adequately set back from the side boundary along Alexander Street, in order to be more subservient to the existing ground floor.

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

Comment: The proposed development does not unreasonably impact on the use or enjoyment of adjoining land and the public domain.

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

Comment: Not applicable. The subject site is zoned R1 General Residential.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential are addressed as follows:

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

The proposed development retains the residential use of the site.

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

The proposed development maintains the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed development retains the residential use of the site.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the Floor space ratio development standard.

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

Comment: The proposed development results in a better outcome, as it provides an additional living space and amenity for the subject site without resulting in unreasonable impacts to adjacent properties.

(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.

(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.*

Comment: The applicant has provided the following written request justifying the contravention of the floor space ratio development standard:

"INTRODUCTION

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the construction of alterations and additions to an existing semi-detached dwelling at 57 Smith Street, Manly.

The maximum floor space ratio under Clause 4.4 of the Manly Local Environmental Plan 2013 (the LEP) is 0.6:1.

The development proposes a departure from this numerical standard and propose a maximum FSR of 0.65:1 as below:

- $163\text{m}^2 \text{ Total GFA } (102\text{m}^2 \text{ Ground Floor} + 61\text{m}^2 \text{ First Floor}) / 231.9\text{m}^2 \text{ SITE AREA} = \text{FSR } 0.7:1$

Refer Manly Council DCP Part 4: Built Form Controls 4.1.3.1 Exceptions to FSR Undersized Lots.

On existing sites in Residential LEP Zones with a site area less than the minimum lot size required on the LEP Lot Size Map, Council may consider exceptions to the maximum FSR under Clause 4.6 of the Manly LEP 2013 when both the relevant LEP objectives and the provisions of this DCP are satisfied.

The minimum lot size for the subject site is 250m². The existing lot size the subject site is 231.8m².

As such, under Clause 4.1.3.1 of the Manly DCP 2013, the floor space ratio of the site may be calculated on 250m² of lot size. This equates to 150m² of gross floor area.

- $163\text{m}^2 \text{ Total GFA } (102\text{m}^2 \text{ Ground Floor} + 61\text{m}^2 \text{ First Floor}) / 250\text{m}^2 \text{ SITE AREA} = \text{FSR } 0.65:1$

The maximum floor area control is identified as a development standard which requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to enable the granting of consent to the development application.

PURPOSE OF CLAUSE 4.6

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument 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.

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.

ONUS ON APPLICANT

Clause 4.6(3) provides that:-

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

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

JUSTIFICATION OF PROPOSED VARIANCE

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:-

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

Precondition 1 - Consistency with zone objectives

The land is located in the R1 General Residential Zone. The objectives of the R1 zone are:-

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

Comments

The development proposal provides for additions to the existing approved dwelling. The proposal is considered to meet the objectives of the R1 zone for the following reasons:

- The proposed works are relatively minor, replacing an existing first floor, and do not result in unreasonable bulk or scale.
- The additional floor area is to the rear of the upper level and does not result in unreasonable bulk or scale.
- The lower level to the rear of the garage, which comprises 27m² is at subfloor level and does not contribute to the bulk and scale of the dwelling.
- The proposal does not have any impact on existing vegetation.
- The proposal continues to provide sufficient solar access to the adjoining properties in accordance with Council's controls.
- The bulk and scale is compatible with the existing surrounding development, with particular reference to No. 5 Jamieson Avenue, which provides for a two storey dwelling above a garage.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.3(1):-

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

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

Comments

The proposal provides for a new upper level to replace the existing upper level. The resultant dwelling is well articulated with the upper level provided with increased boundary setbacks. The new upper floor level is provided with an increased setback to the front boundary and will not be prominent in the streetscape. Therefore, the proposal satisfies objective 1(a) as there is no significant increase in bulk or scale. Further, the proposal achieves objective 1(b) as there is no change to the building envelope and therefore the proposal does not obscure any important landscape or townscape feature. The proposed development does not have a detrimental impact on the existing visual relationship with the existing surrounding development. This has been achieved by providing an increased setback to the side boundary from the upper level (2.2m) and ensuring existing vegetation is retained and therefore satisfies objectives 1(c).

The proposal does not alter access to the public land and therefore satisfies objective 1(d). Objective 1(e) is not applicable.

For the above reasons, we are of the view that the requested variation and the resultant development is consistent with the objectives of the development standard.

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

It is unreasonable and unnecessary to require strict compliance with the development standard given the slope of the site and that the existing subfloor area which is defined as floor space does not add to the bulk and scale of the development. The floor space control has not been strictly enforced in the locality, and the proposed additional floor space does not result in any detrimental impact.

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

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

The primary issue is whether or not there are sufficient environmental planning grounds particular to the site to allow the variation to the floor space ratio development standard. In this regard the following has been considered: -

- *The site falls towards the street with the existing sub floor area not contributing to the bulk or scale of the development. Removing the sub floor area from the calculation would provide for a development complying with the controls.*

When having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for floor space ratio. In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

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

The recent appeal of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 is to be considered.

In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

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

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

Accordingly in regards to the proposed development at 57 Smith Street, Manly, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

- The variation to the floor space ratio is inconsequential as it has no detrimental impact on the streetscape or the amenity of neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard. In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the

Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
Comment: Yes. Refer to comments under 'Justification of Proposed Variance' above which discusses the achievement of the objectives of the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b)
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
Comment: There is a variety of development within the immediate vicinity, where the standard has not been enforced. Of particular reference are the number of residential flat buildings.
5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of and should not have been included in the particular zone.
Comment: The development standard is applicable to and appropriate to the zone.

CONCLUSION

The development proposes a departure from the floor space ratio. The proposal produces an appropriate development outcome. The variation to the floor space control does not result in any detrimental impacts to the streetscape or the adjoining properties. As there is no material impact on adjoining properties or the public domain arising from the variation to the floor space ratio development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard."

- (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*

Comment: The applicant's written request has adequately addressed the relevant matters.

- (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.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.4	Stormwater Management	Yes	Yes	The proposed development is consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposed new first floor addition is adequately set back from the streetscape so as not to result in unreasonable visual bulk. The proposed development does not include any additional fencing or car parking in the streetscape.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed development is complementary to and consistent with existing developments in the locality.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Not applicable. No change is proposed to the front fence.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The subject site adequately maintains the heritage significance of the site, including its fabric, settings, relics and views. The subject site is not in the vicinity of the foreshore, and does not contain any potential archaeological sites, places of Aboriginal significance, or places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

The proposed development is of a complementary and consistent design to the existing development, and does not to unreasonably impact on the item or the locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposed development is of a form and design so as to not to detract from the significance of the Pittwater Road Conservation Area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Not applicable. The proposed development does not include infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

The heritage significance of the site has been considered throughout the planning process for this application. Council's Heritage Advisor has reviewed the application and has raised no objection to the proposal, as it adequately conserves the heritage value of the subject site and surrounds.

3.3.1 Landscaping Design

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

The proposed development maintains compliant landscaped open space to allow for adequate tree planting and vegetation.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

The proposed development generally retains the existing building footprint, so does not unreasonably impact upon important landscape features or vegetation.

3.3.2 Landscape/Tree Preservation

Objective 1) To ensure that development protects and conserves the natural environment.

The proposed development generally retains the existing building footprint, so adequately protects and conserves the natural environment.

Objective 2) To protect and preserve urban bushland areas in recognition of their:

- *value as part of the natural heritage;*
- *aesthetic value; and*
- *value as a recreational, educational and scientific resource.*

The subject site does not contain any urban bushland.

Objective 3) To protect and prevent clearing of remnant and or rehabilitated riparian land value as a recreational, educational and scientific resource.

The subject site does not contain any riparian land.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposed development provides equitable access to light and sunshine in that it does not unreasonably impact on the windows or private open spaces of adjacent dwellings to the south.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposed development leads to a moderate increase to overshadowing to the private open spaces of the properties to the south during midwinter in the morning. However, the overshadowing impact of the proposed development drastically decreases at midday and the afternoon. As such, the proposed development allows for adequate sunlight access to private open spaces. As demonstrated, north-facing windows on properties to the south are already predominantly overshadowed by the existing development and the development at No. 55 Smith Street. As such, the proposed development does not unreasonably increase overshadowing to the windows of nearby properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed development is adequately set back from the north, east and west boundaries in order to adequately modulate the building's bulk. The proposed first floor addition is set to the southern boundary, but this is in order to match with the existing first floor addition at No. 55 Smith Street.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed development minimises the loss of privacy to adjacent and nearby development with the inclusion of privacy screening to the proposed rear balcony, adjacent to the property to the south. This screening prevents direct viewing between properties. Further, the rear balcony is recessed 1090mm from the southern boundary (common boundary with the adjoining semi-detached dwelling, providing both acoustic and further visual privacy. All new windows face the surrounding streets, so do not result in unreasonable privacy impacts.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposed development provides adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed first floor addition includes a rear balcony and windows facing the street, thereby encouraging awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposed development does not unreasonably impact upon views to, from or across the subject site or adjacent sites.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

The proposed development does not unreasonably impact upon views from adjacent and nearby development, and to and from public spaces, including to icons, landmarks and buildings.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

The proposed development does not result in unreasonable view creep.

Part 4 - Development Controls

Site Area:	231.9m ²	Permitted/ Required	Proposed	Complies Yes/No
Residential Density – Area D3	250m ² of site area per dwelling	231.9m ² of site area per dwelling	231.9m ² of site area per dwelling	Yes – Existing and unchanged
Wall height North side	6.5m	6.42m	6.42m	Yes
South side	6.5m	6.42m	6.42m	Yes
Number of Storeys	2	2	2	Yes
Roof height	2.5m	1.27m	1.27m	Yes
Setback Front	6.0m or streetscape	3m to ground floor (existing) 10.9m to first floor addition		Yes
North setback side – Ground	1.29m	978mm	978mm	Yes – Existing
North setback side – First	2.14m	890mm-1.5m	890mm-1.5m	No. See comment below.
South setback side – Ground	1.29m	0m	0m	Yes – Existing (party wall)
South setback side – First	2.14m	0m	0m	Yes – Party wall
Wall on boundary height	3m	6.42m	6.42m	No. See comment below.
Wall on boundary length	35% of boundary length (12.06m)	50.7% (17.5m)	50.7% (17.5m)	No. See comment below.
Setback Rear	8.0m	8.5m	8.5m	Yes
Open space - total	Min. 55% of Site Area (127.545m ²)	33.% (78.5m ²)	33.% (78.5m ²)	Yes – Existing
Open space - landscaped	Min. 35% of Total Open Space (27.475m ²)	69% (54.5m ²)	69% (54.5m ²)	Yes
Open space - above ground	Max. 25% of Total Open Space (19.625m ²)	No calculable open space above ground	No calculable open space above ground	Yes
Number of Endemic Trees	1	0	0	No. See comment below.
Private Open Space	18m ²	78.5m ²	78.5m ²	Yes
Car Parking – Residents	2 spaces	0 spaces	0 spaces	Yes – Existing

Note: by virtue of its three street frontages, the subject site does not have clear front, rear or side boundaries. For the purpose of this assessment:

- The front boundary is taken to be the eastern boundary on Smith Street, as per the address of the property;
- The rear boundary is taken to be the western boundary, opposite to the front boundary; and
- The side boundaries are taken to be to the north and south.

Comment:

4.1.4 Setbacks (front, side and rear) and Building Separation

Clause 4.1.4.2 of the MDCP 2013 requires that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposal requires a minimum northern side setback to the first floor addition of 2.14m. The proposal includes a non-compliant northern side setback to the first floor of 890mm to 1.5m.

Objective 1) 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.

The proposed development provides setbacks consistent with comparable existing and recently approved developments in the locality. As such, the proposed development retains the existing spatial portions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed development does not impact upon traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. The subject site does not contain urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.

The subject site is not located within a bush fire asset protection zone.

4.1.4.3 Wall on Boundary – Height and Length

Clause 4.1.4.3 of the MDCP 2013 requires that the maximum height of a wall within 0.9m of a side boundary is 3m and is to be limited to 35% of the boundary's length. The proposed development proposes a 6.42m high wall with a nil south side setback. The proposed wall is 17.5m long, equating to 50.7% of the side boundary length. However, the wall along the boundary is predominantly proposed to match the existing party wall to the first floor addition of the adjacent property to the south.

The proposed wall height and overall height of building are compliant with the controls of the MDCP 2013 and Manly LEP 2013. Finally, the proposed development is consistent with the relevant height of building objectives in Manly LEP 2013 in that the bulk of the development is in character with the existing streetscape, does not block views to or from the space or public spaces, and provides adequate solar access to adjacent properties. As such, the non-compliance in relation to wall on boundary height and length is considered acceptable.

4.1.5 Open Space and Landscaping

Clause 4.1.5.2 of the MDCP 2013 requires that the subject site provide on endemic tree. The proposed development does not propose any additional endemic trees, and does not demonstrate that the subject site contains existing endemic trees.

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

The proposed development retains the existing vegetated areas and is compliant in relation to open space and landscaping requirements.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

As above, the proposed development provides compliant open space and landscaping, thereby encouraging appropriate tree planting and maintenance of vegetation at ground level.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

The amenity impacts (including sunlight, privacy, and views) resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

As above, the proposed development provides compliant open space and landscaping, thereby allowing for adequate water infiltration on the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

The proposed development is adequately landscaped so as not encourage the spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

The proposed development is adequately landscaped so as to maximise wildlife habitat and corridors.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area	✓	
Foreshore Scenic Protection Area		✓
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Pittwater Road Conservation Area. The proposed development shall have minimal impact on the heritage significance of the area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed development is suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with one submission received from the following objector raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. B. & J. Green, 55 Smith Street, Manly	<ul style="list-style-type: none"> The first floor addition has a nil side setback to the south – the addition should have a flat roof to reduce the impact. The southern wall of the first floor addition will be overbearing and lead to overshadowing. The proposed first floor deck with privacy screening will result in overshadowing. The proposed first floor deck will lead to overlooking.

Comment:

Side Setback / Party Wall

The proposed southern side setback is acceptable as it is a party wall forming part of the semidetached dwelling. The length of the party wall is acceptable for the reasons detailed in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls.

Roof Design

The proposed roof is considered acceptable, as it does not lead to any unreasonable overshadowing impact to adjacent properties and is well below the permissible building height limit within Clause 4.3 of the Manly LEP 2013. Further, the pitched roof has been incorporated into this design in order to provide greater sympathy to the heritage significance of the site, being within the Pittwater Road Conservation Area.

Overshadowing

The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Sunlight Access and Overshadowing.

Privacy – Acoustic and Visual

The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Privacy and Security.

79C(1) (e) - the public interest.

The proposed development is in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposed development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory for **Approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 251/2017 for alterations and additions to the existing semi-detached dwelling at 57 Smith Street, Manly be **Approved** subject to the following conditions/for the following reasons Here):-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 251/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
A.01 Site Plan	Rev. D 1 Nov 2017	Du Plessis + Du Plessis Architects
A.04 Proposed Ground Floor Plan	Rev. D 1 Nov 2017	Du Plessis + Du Plessis Architects
A.05 Proposed First Floor Plan	Rev. D 1 Nov 2017	Du Plessis + Du Plessis Architects
A.06 Proposed Roof Plan	Rev. D 1 Nov 2017	Du Plessis + Du Plessis Architects
A.07 Proposed Section XX & YY	Rev. D 1 Nov 2017	Du Plessis + Du Plessis Architects
A.08 Semi Elevations	Rev. D 1 Nov 2017	Du Plessis + Du Plessis Architects

Reference Documentation relating to Development Consent No. 251/2017:

- BASIX Certificate No. A296936 prepared by Du Plessis + Du Plessis Architects dated 31 October 2017
- Preliminary Geotechnical Assessment prepared by White Geotechnical Group dated 16 October 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

GENERAL CONDITIONS RELATING TO APPROVAL**1A (1AP04)**

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**ANS01**

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

4 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

5 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

6 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m²)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

7 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

8 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

9 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

10 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

11 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

13 (4BM01)

All materials and finishes of the proposed additions are to match, as closely as possible the material and finish of the existing building.

Reason: To enhance the visual quality of the development and the streetscape.

14 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.

- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

15 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

16 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

17 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

18 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

19 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

20 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.





ITEM 3.4	DA272/2017 - 96 NORTH STEYNE, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING
REPORTING OFFICER	Claire Ryan
TRIM FILE REF	2018/199296
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA272/2017 for Alterations and additions to an existing Residential Flat Building at Lot 101 DP 1110110, 96 North Steyne, Manly subject to the conditions and for the reasons set out in the Assessment Report.



northern
beaches
council

Northern Beaches Local Planning Panel Report

2018/099789

DA #	272/2017
Site Address	96 North Steyne, Manly Lot 101 DP 1110110
Proposal	Alterations and additions to an existing Residential Flat Building
Officer	Claire Ryan

SUMMARY:

Application Lodged:

27 November 2018

Applicant:

Squillace Architects

Owner:

Cecil and Isabel Koutsos

Estimated Cost:

\$2,647,500

Zoning:

MLEP, 2013 – R3 Medium Density Residential

Heritage:

Adjacent to Item 2 Stone Kerbs

NSW LEC:

Not applicable

Notification:

4 December 2017 to 15 January 2018

Submissions received:

Nil

Site Inspected:

8 February 2018

LEP (4.6) Variations proposed:

Height of Building and Floor Space Ratio

DCP Variations proposed:

Side Setback (South – Fourth Floor), Open Space Above Ground, Private Open Space

Recommendation:

Approval

Subject Property and surrounding area



The subject property is commonly known as 96 North Steyne and legally known as Lot 101 in DP 1110110. The site is located on the western side of North Steyne. The property is irregular in shape and has a frontage of 29.46m to North Steyne, an average depth of 44m and an overall site area of 1,335m². The property currently contains a five-storey residential flat building with vehicular access via an existing driveway from Pine Street to an existing basement car park. The property is level.

The adjacent property to the north, at 98 North Steyne, is developed with a five-storey residential flat building. Development in this area consists of shop top housing and residential flat buildings.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

Recent relevant applications on site include:

DA357/2010: Strata Subdivision of existing Residential Flat Building into twenty-two (22) lots. Approved under delegation on 13 April 2011.

Description of proposed development

The proposal seeks consent for the following works:

- Extensions of each floor (totalling an additional 269.5m² GFA);
- Reduction of floor area at ground, first second and third floors (totalling a reduction of 10.5m² GFA);
- Reconfiguration of balconies; and
- Addition of privacy screens.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Landscaping Comments

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Waste Comments

Council's Waste Officer recommended the following conditions be applied:

(2WM05)

All Multi Unit Dwellings (MUDs) must locate the waste storage and recycling area with convenient access to Council's usual collection point.

To assist the servicing of a Council provided bins. Council allocates a 240L general waste bin, a 240L paper recycling bin and a 240L co-mingled recycling bin to be shared by every 4 residential dwellings. Provision for an additional 240L vegetation bin should be included.

The storage area for MUDs of 17 or more dwellings must be accessible to Council Garbage Collectors unless bins requiring collection are normally be presented at kerbside. For residential MUDs with 16 or fewer dwellings, kerbside collection is usually required. Refer to Manly Development Control Plan 2013.

Reason: To ensure Multi Unit Dwelling developments allow sufficient space for waste bins.

(2WM06)

All Multi Unit Dwellings must provide a location for dry recycling systems (i.e. recycling of paper and recyclable containers) and services. Manly Council provides recycling services to all residential dwellings.

Reason: To provide of dry recycling systems as required by the Department of Environment and Climate Change (DECC).

ANS

The residential bin storage capacity required is 5 x 240L general waste bins, 5 x 240L paper recycling bins and 5 x 240L co-mingled recycling bins. The bins are to be serviced from the bin storage area within private property. Kerbside collection is prohibited. These conditions apply regardless of whether a private waste contractor is engaged.

These conditions were not included in the recommendation, as the proposal does not alter the use or density of the existing residential flat building, so does not trigger new waste requirements.

Coastal Management Comments

Council's Coastal Management Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

External Referrals

AUSGRID

The proposal was referred to Ausgrid. No comment had been received at the time of writing this report.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) **the provisions of:**
 - (i) **any environmental planning instrument, and**

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development and the Apartment Design Guide

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
 - (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the alteration of a five-storey residential flat 'housing' development, which consists of basement car parking and 22 self-contained dwellings. As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):
 - (a) the advice (if any) obtained from the design review panel, and
 - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
 - (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	No change to the existing approved siting of the development is proposed.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	No change to the approved orientation of the development is proposed.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	No change to the existing approved transition between the private and public domain of the development is proposed.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)	The existing approved development does not include any communal open space. The proposed development does not alter this.

Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (%)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>The existing approved development does not include deep soil zones. The proposed development does not alter this.</p>
Site area	Minimum dimensions	Deep soil zone (%)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The proposed development does not provide compliant building separation in accordance with this clause. However, as demonstrated below, the setbacks of the proposed development are generally consistent with the existing development, and with existing comparable developments in the locality. Further, privacy screening is included to mitigate direct viewing and acoustic privacy impacts. As such, the proposed development does not result in unreasonable privacy impacts, and therefore meets the intention of this clause.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>No change to the approved pedestrian access and entry arrangements is proposed.</p>												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>No change to the approved vehicular access is proposed.</p>												

Bicycle and Car Parking	<p>For development in the following locations: On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>The proposed development makes no change to the approved solar and daylight access arrangements.</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</p>	<p>The proposed development makes no change to the approved ventilation arrangements.</p>

Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>The proposed development makes no change to the approved ceiling heights.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The proposed development reconfigures the internal layout of the majority of dwellings within the existing residential flat building. However, each dwelling retains compliant apartment sizes and room dimensions.</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	4m for 2 and 3 bedroom apartments																	
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts																	
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Units 9, 10, 15, 16 and 22 are not compliant with this criterion. Units 10 and 16 are unchanged by the proposal. The proposal provides more useable private open space in a logical in the form of terraces. As such, the altered terraces that do not meet the requirements (Units 9, 15 and 22) are considered to meet the intention of this criterion.																
	<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	
	Dwelling Type		Minimum Area	Minimum Depth														
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	1 bedroom apartments		8m ²	2m														
	2 bedroom apartments		10m ²	2m														
3+ bedroom apartments	12m ²	2.4m																
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.																		
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	The proposed development makes no change to the approved number of units of the single circulation core (22 units over 5 storeys).																
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	The proposed development makes no change to the approved storage arrangements.																
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²						
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	Studio apartments		4m ²															
	1 bedroom apartments		6m ²															
	2 bedroom apartments		8m ²															
3+ bedroom apartments	10m ²																	
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	The proposed reconfiguration of the approved dwellings adequately respond to noise sources.																
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The proposed development makes no change to the approved siting layout and design of the building in relation to noise and pollution.																
Configuration																		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	The proposed development makes no change to the approved apartment mix.																

Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The proposed development provides a more modernised façade, thereby creating greater visual interest, while respecting the character of the local area.																																			
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	The proposed modifications to the roof are consistent with the existing roof form and the streetscape.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The proposed development does not alter the approved existing landscaped area.																																			
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		The existing approved development does not include any planting on structures. The proposed development does not alter this.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	The proposed development makes no change to the existing adaptable unit arrangements.																																			
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.																																			

Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Not applicable.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Not applicable.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	The proposed development is compliant with this criterion.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?	The proposed development is compliant with this criterion.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposed development is compliant with this criterion.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The proposed development is compliant with this criterion.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
 - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
 - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
 - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The parking rate specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments) does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The proposed modifications make no alteration to the parking requirement for the site. The proposed apartment sizes are compliant. No change is made to ceiling heights for each apartment. The application is not being refused in relation to these matters.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
 - (a) the design quality principles, and
 - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:
 - (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
 - (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: Adequate consideration has been given to the design of the proposed amendments in relation to the design quality principles and the objectives specified in the Apartment Design Guide, as demonstrated in the assessment above, and in the submitted SEPP 65 report submitted with the application.

Manly Local Environmental Plan 2013

The subject site is located in Zone R3 Medium Density Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R3 Medium Density Residential

Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposed development retains the use of the site as a residential flat building.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development retains the existing variety of housing types in the locality.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed development appropriately revitalises the existing residential flat building development.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed development retains the use of the site as a residential flat building.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	13m	14.9m (existing maximum) 14.37m to proposed roof extension	No	See comment below.
4.4	Floor Space Ratio	1.5:1 2002.5m ²	2.33:1 3,110.5m ²	No	See comment below.

4.6 Exceptions to development standards

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	13m
Proposed	14.37m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	10.53% to development standard 0% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed development makes amendments to the roof form, to allow for greater shelter for the terraces below, resulting in the height of building non-compliance. The proposed roof extensions are consistent with the existing roof form and that of existing developments in the streetscape. As such, the proposed modifications will not unreasonably impact upon the character of the locality.

- (b) *to control the bulk and scale of buildings,*

Comment: The bulk and scale of the proposed development is controlled by articulation of the building by terrace and balcony spaces, and is consistent with other developments in the immediate vicinity. Further, the proposed development is acceptable in relation to floor space ratio for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Floor Space Ratio.

- (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),*

Comment: The proposed development does not unreasonably disrupt views to, from or between public spaces, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development, Maintenance of Views.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The proposed development is acceptable in relation to solar access, for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development, Sunlight Access and Overshadowing.

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

Comment: Not applicable. The subject site is zoned R3 Medium Density Residential.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of Zone R3 Medium Density Residential are addressed as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposed development retains the use of the site as a residential flat building.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development retains the existing variety of housing types in the locality.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed development appropriately revitalises the existing residential flat building development.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed development retains the use of the site as a residential flat building.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of building development standard.

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

Comment: The proposed development results in a better outcome by providing allowing for refurbishment of the approved development, without resulting in unreasonable impacts to the subject site or adjacent sites.

(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.

(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.*

Comment: The applicant has provided the following justification for the contravention of the height of building development standard:

"The applicant requests a variation to the Height of Buildings (HOB) development standard, as prescribed in clause 4.3 of Manly LEP 2013. This request is made pursuant to clause 4.6 Exceptions to Development Standards.

The following is a summary of the proposal:

Requirement	HOB: 13m
Existing building	Building: 14.37 approx
Proposed	Building: 14.37 approx
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Change in HOB is 10.5%

1. Introduction

A Development Application is submitted to Manly Council for alterations and additions to an existing residential flat building which includes additions and subtractions to the floor area of the building and an overall upgrade of each façade of the building. There is no change to the maximum height of the existing building. The top of the roof RL 20.79m AHD.

The maximum height of the existing building is 14.9m. The Manly LEP 2013 prescribes the maximum height limit for this site as 13m. As the existing building is non-compliant with the applicable height limit under Clause 4.3 of the Manly LEP 2031 a variation to the development standard accompanies the development application, as an addendum to the submitted Statement of Environmental Effects.

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Clause 4.3 of the Manly LEP 2013 provides:

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following:
 - i. views to nearby residential development from public spaces (including the harbour and foreshores),
 - ii. views from nearby residential development to public spaces (including the harbour and foreshores),
 - iii. views between public spaces (including the harbour and foreshores),
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

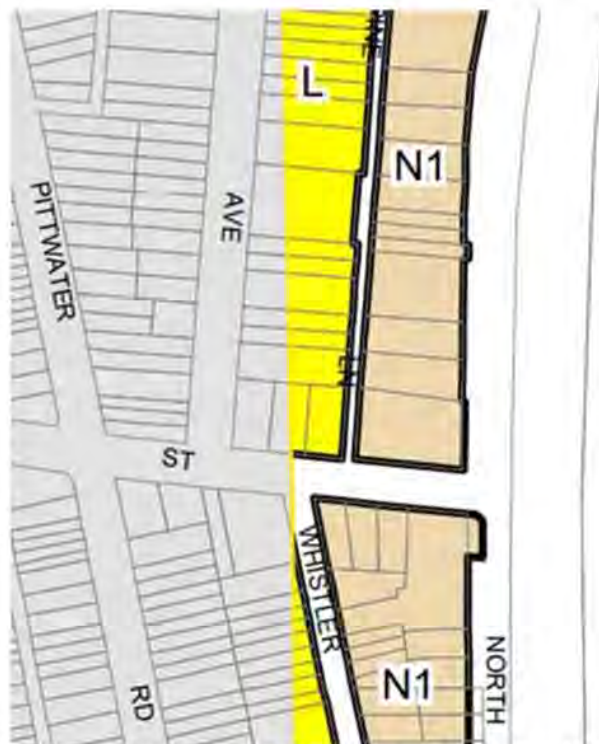


Figure 1: Extract of MLEP 2013 Height of Buildings Map 005

2. Mechanism for a variation

The Manly LEP 2013 contains provisions under Clause 4.6 which allow for the consent authority to consider certain variations to the principal development standards listed under Part of the LEP. The variations may only be considered reasonable where they have been suitably justified by an applicant to be 'unreasonable or unnecessary' in the circumstances of the case, pertaining to site conditions, surrounding character of the built form, etc. The provisions of Clause 4.6 are reproduced below:

4.6 Exceptions to development standards

- (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.
- (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.

- (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.
- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4.*

Having regard to the above, in summary a development standard can be varied if a submission is made (in writing) by the applicant justifying a contravention to the development standard on the grounds that:

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

The consent authority must however be satisfied that:

- the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3), and*
- 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.*

3. Legal Principles

The decisions of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ; [2015] NSWLEC 90; and [2015] NSWCA 248; and subsequently Miskovich v Waverley Council [2016] NSWLEC 101, Bates Smart Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1001, provide recent assistance as to the application of Clause 4.6 and some guidance can still be gained from the relevant case law dealing with SEPP 1, where relevant.

As outlined in Bates Smart Pty Ltd v Council of the City of Sydney [2014] NSWLEC1001, cl 4.6 of LEP 2012 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development.

The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

4. Is the planning control in question a development standard?

Clause 4.3 provides inter-alia that (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

'Development Standards' has the following meaning ascribed to it under Section 4(1) of the Environmental Planning and Assessment Act, 1979:

"development standards" means provisions of an environmental planning instrument in relation to the carrying out of development, being provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of -

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;
- (b) the proportion or percentage of the area of a site which a building or work may occupy;
- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;
- (d) the cubic content or floor space of a building;
- (e) the intensity or density of the land, building or work, the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) drainage;
- (k) the carrying out of earthworks;
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;
- (m) the provisions of services, facilities and amenities demanded by development;
- (n) the emission of pollution and means for its prevention or control or mitigation; and
- (o) such other matters as may be prescribed;"

The Clause relevant in this instance is:

- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;

On this basis, it is my opinion that Clause 4.3 of the Manly LEP 2013, although referred to as a local standard is a development standard and not a "prohibition" in respect of development, and one amenable to an objection under Clause 4.6. This would be consistent with Council's intention.

5. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), sets out 5 ways of establishing that compliance is unreasonable or unnecessary as follows:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The 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....."

43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

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.....

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.....

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.....

A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary....."

However, care needs to be taken not to expand this fifth way of establishing that compliance is unreasonable or unnecessary beyond its limits. It is focused on "particular land" and the circumstances of the case. Compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the particular land is found to be unreasonable or inappropriate. If the particular land should not have been included in the particular zone, the standard would not have applied, and the proposed development would not have had to comply with that standard. To require compliance with the standard in these circumstances would be unreasonable or unnecessary.

50 However, so expressed, this way is limited. It does not permit of a general inquiry into the appropriateness of the development standard for the zoning. An objection would not be well-founded by an opinion that the development standard is inappropriate in respect of a particular zoning (the consent authority must assume the standard has a purpose).....

The requirement that the consent authority form the opinion that granting consent to the development application is consistent with the aims of SEPP 1 as set out in clause 3 (one of which is the promotion and coordination of the orderly and economic use and development of land) makes it relevant "to consider whether consent to the particular development application encourages what may be summarised as considered and planned development" or conversely may hinder a strategic approach to planning and development."

Set out below is an analysis of the standard, having regard to the principles enunciated in both the Winten and Wehbe judgements as applicable:

Comments:

The existing building is a longstanding development on the North Steyne promenade, reflecting Council's desired character for the area as promoted in the Manly LEP 2013 which prescribes a maximum building height limit of 13m for the area.

The height of the existing building is acknowledged by Council's staff as non-compliant, however the building is deemed acceptable and is supported in its current context in relation to its bulk, scale and general appearance.

The site has a prominent corner location, three road frontages and frontage to the tourist hub of North Steyne promenade. These site characteristics create the opportunity to have a visually attractive building that essentially 'hugs the corners' of the street and optimises outlooks towards the beach.

Council has accepted this premise for this site in the past. It is purported that this has not changed and the overall development should be assessed more in terms of the outcomes of its street appeal and context than compliance with a numerical standard (in this particular case). The building is directly opposite the substantial and imposing heritage listed North Steyne Surf Club. The subject site, known as Bella Vista Apartments, is a complementary landuse to the surf club as well as the North Steyne beachfront.

It is impossible to restrict the existing building to strict compliance with the prescribed numerical building height in this case as the development already breaches the development standard. The change in the percentage of non-compliance and impact of the proposed floor area and façade upgrades on the overall bulk, scale and street appeal and appearance of the building is a more reasonable assessment of the variation. The variation is a maximum of 1.37m or 10.5% of the prescribed height limit for the site.

The building does not draw attention to itself beyond that reasonably expected on this corner site. It remains in context with the approved height, bulk and scale of surrounding built form. Further it remains respectful of the North Steyne Surf Life Saving Club at the end of Pine Street. There is no attempt to emulate the design, colours or materials of the surf club, rather the proposed works to the apartments provide a modern, vibrant street appearance that is complementary to the surf club. The existing building height does not result in any additional overshadowing of private or public property. Being a corner site, located on the north-western corner, there are no shadowing impacts.

In terms of view sharing, the existing building is a longstanding development on this corner site. Developments along Pine Street, Pine Lane and North Steyne have developed beside and opposite. Its height, bulk, scale and form have already been taken into account. There is no change to the current relationship of these development as a result of this proposal and the existing height of the building, albeit that it is numerically non-compliant.

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

The proposal is consistent with the established height, bulk and scale of development within the immediate vicinity. Strict application of the current height limit for the site would prevent achievement of the proposed update and improvements to the building which are considered to outweigh the application of the numerical standard in this instance.

The existing building height does not result in any significant adverse impacts. The upgrades and improvements to the onsite private open space, amenity for residents, opportunities for increased passive surveillance of the street and public realm from the larger balconies and modernization of the building appearance are considered positive for the wider community, both socially and economically.

New, refreshed and updated buildings in prominent tourist locations are generally interrupted as a positive economic environment and dynamic place to be, hence drawing on the national and international attraction of the Manly beachfront area.

6. Is it consistent with the objectives of the standard and objectives for the zone?

The Land and Environments Court's recent position in considering consistency with objectives, is the adoption of Pearlman J in Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21 where,

Her Honor expresses the following opinion [at 27]:

"The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, not even that it is compatible."

The objectives of the Height of Building standard are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - i. views to nearby residential development from public spaces (including the harbour and foreshores),*
 - ii. views from nearby residential development to public spaces (including the harbour and foreshores),*
 - iii. views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comments:

- *The proposed building is consistent with the prevailing established and likely future character of buildings and heights in the immediate locality.*
- *The bulk and scale of the development has been appropriately managed by accepted design techniques including variation to texture, materials and colours.*
- *The existing building is a longstanding development on the North Steyne, opposite the beach front, its bulk and scale, partly defined by its existing height does not have an adverse impact on development in the immediate area and is consistent with its corner location.*
- *Views between the streets and the beach are not significantly affected by the proposal.*
- *Solar access to public open spaces and adequate sunlight access to private open spaces and to habitable rooms is maintained.*

The objectives of the R3 zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comments:

The existing building caters for use as both a temporary residential accommodation, and also permanent full-time rentals and/or owner-occupiers. This provides an opportunity consistent with other apartments in the locality to cater for the tourist market that provide a positive economic contribution to the local economy. The proposed works aim at updating and revitalizing the building in line with current trends that seek good quality indoor-outdoor recreation and entertainment areas, clean crisp architectural lines and a squarer more contemporary appearance of elements and features of buildings. This will further enhance the ongoing role of Manly as its positive recognition to national and international visitors.

7. Conclusion

The breach of the development standard does not raise any matter of significance (other than a positive one) for the proposal and surrounding properties, nor is it contrary to the public interest or raise any matter which would be of State or Regional significance other than as discussed above. In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.

As detailed above, there are sufficient environmental planning grounds to justify the contravention of the height of building development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the North Steyne foreshore area.

Whilst the existing and proposed non-compliance with the numerical HOB standard is acknowledged, the development is compatible and consistent with the likely future bulk, scale and form of adjoining and surrounding developments within the locality, and the variation is well absorbed within the context of the existing and surrounding built form and not be readily perceptible. There is no reasonable argument as to why strict application of the HOB standard should be applied for the subject site and the development given the circumstances outlined.

The breach of the development standard does not cause any significantly detrimental impacts to surrounding properties which in isolation would warrant strict adherence to the current, nonconforming HOB. The proposal is in the public interest and the proposal form is commensurate with that of adjoining and surrounding residential developments. Whilst the proposed breach may be considered numerically significant (being over 10%), the additional building height is contained within the existing overall built form and envelope of the existing building.

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In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

As detailed above, there are sufficient environmental planning grounds to justify contravening the development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the area. The additions and alterations do not result in an inconsistent built form in this particular part of the locality given the number of three, four and six storey developments in close proximity to the property.

Critically, the new work does not add to the height or result in the non compliance, nor block any existing available public or private views towards North Steyne beach and nor does it result in overshadowing impacts to western or southern adjoining neighbours (over and above any existing impacts).

As the above submission demonstrates that:

- *compliance with the development standard are unreasonable or unnecessary in the circumstances of the case; and*
- *there are sufficient environmental planning grounds to justify contravening the development standard; and*
- *the matters required to be demonstrated by 4.6(3) have been addressed;*
- *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,*

The variation to the standard is worthy of support, which is fundamental to the approval of the development application."

- (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*

Comment: The applicant's written request adequately addresses the relevant matters.

- (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.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density residential zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. The proposed variation is greater than 10% is consistent with the objectives of the zone and therefore is required to be determined by the Northern Beaches Local Planning Panel.

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	1.5:1 (2,002.5m ²)
Proposed	2.33:1 (3,110.5m ²)
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	55.33% to development standard 9% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 2013 are:

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

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

Comment: The proposed development is consistent with the existing and desired streetscape character, in that the street contains a number of examples of residential flat building developments, with comparable developments being recently approved in the area.

- (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,*

Comment: The proposed development does not obscure any important landscape or townscape features.

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

Comment: The proposed amendments are adequately set back from site boundaries, thereby providing an appropriate visual relationship between existing development and the proposed new works.

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

Comment: The proposed development does not unreasonably impact upon the use or enjoyment of adjacent properties or the public domain.

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

Comment: Not applicable. The subject site is zoned R3 Medium Density Residential.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of Zone R3 Medium Density Residential are addressed as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposed development retains the use of the site as a residential flat building.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development retains the existing variety of housing types in the locality.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed development appropriately revitalises the existing residential flat building development.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed development retains the use of the site as a residential flat building.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The proposed development provides for an appropriate level of flexibility in applying the floor space ratio development standard.

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

Comment: The proposed development results in a better outcome by providing allowing for refurbishment of the approved development, without resulting in unreasonable impacts to the subject site or adjacent sites.

(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.

(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.*

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Comment: The applicant has provided the following justification for the contravention of the height of building development standard:

"The applicant requests a variation to the Floor Space Ratio development standard, as prescribed in clause 4.4 of Manly 2013. This request is made pursuant to clause 4.6 Exceptions to Development Standards.

The following is a summary of the proposal for easy reference:

Requirement	Site Area: 1,335sqm FSR: 1.5:1
Existing building	GFA: 2,885.9sqm FSR: 2.54:1
Proposed	GFA: increase of 191.8sqm over 5 levels Total GFA: 3,077.4sqm FSR: 2.71:1
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Change in FSR is 0.17:1 or 6.7%

1. Introduction

A Development Application is submitted to Manly Council for alterations and additions to an existing residential flat building which includes the additions and subtractions to the overall floor area of the building. The total change is floor space equates to 191sqm of additional gross floor area. The additions are spread across the habitable floor levels of the buildings, thereby not impacting significantly on the bulk or scale of the building. These changes in floor area are combined in extensions of balcony areas to update the visual appearance of the building and improve the indoor/outdoor private open space areas of the units. This is achieved within a quality architectural upgrade of the external appearance of the building within the streetscape.

As the existing and proposed building are non-compliant with the applicable floor space ratio under Clause 4.4 of the Manly LEP 2031 a variation to the development standard is submitted with the Statement of Environmental Effects.

Clause 4.4 of the Manly LEP 2013 provides:

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

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

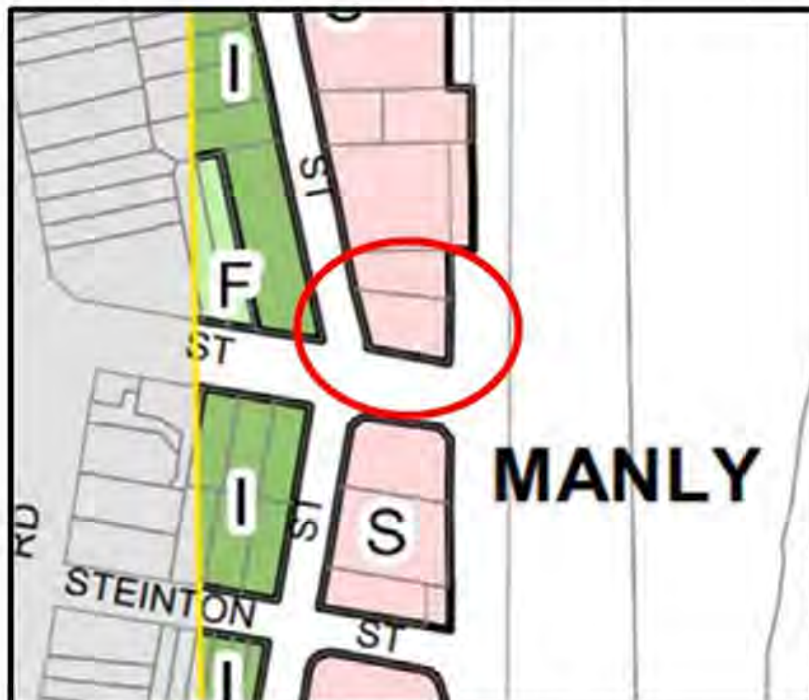


Figure 1: Extract of MLEP 2013 Floor Space Ratio Map 005

2. Mechanism for a variation

The Manly LEP 2013 contains provisions under Clause 4.6 which allow for the consent authority to consider certain variations to the principal development standards listed under Part of the LEP. The variations may only be considered reasonable where they have been suitably justified by an applicant to be 'unreasonable or unnecessary' in the circumstances of the case, pertaining to site conditions, surrounding character of the built form, etc. The provisions of Clause 4.6 are reproduced below:

4.6 Exceptions to development standards

(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.

(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.

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

- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4.

Having regard to the above, in summary a development standard can be varied if a submission is made (in writing) by the applicant justifying a contravention to the development standard on the grounds that:

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

The consent authority must however be satisfied that:

- the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3), and
- 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.

3. Legal Principles

The decisions of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ; [2015] NSWLEC 90; and [2015] NSWCA 248; and subsequently *Miskovich v Waverley Council* [2016] NSWLEC 101, *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1001, provide recent assistance as to the application of Clause 4.6 and some guidance can still be gained from the relevant case law dealing with SEPP 1, where relevant.

As outlined in *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC1001, cl 4.6 of LEP 2012 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development.

The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

4. Is the planning control in question a development standard?

Clause 4.4 provides inter-alia that (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

'Development Standards' has the following meaning ascribed to it under Section 4(1) of the Environmental Planning and Assessment Act, 1979:

"development standards" means provisions of an environmental planning instrument in relation to the carrying out of development, being provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of -

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;
- (b) the proportion or percentage of the area of a site which a building or work may occupy;
- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;
- (d) the cubic content or floor space of a building;
- (e) the intensity or density of the land, building or work, the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;

- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) drainage;
- (k) the carrying out of earthworks;
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;
- (m) the provisions of services, facilities and amenities demanded by development;
- (n) the emission of pollution and means for its prevention or control or mitigation; and
- (o) such other matters as may be prescribed;"

The Clause relevant in this instance is:

- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;

On this basis, it is my opinion that Clause 4.4 of the Manly LEP 2013, although referred to as a local standard is a development standard and not a "prohibition" in respect of development, and one amenable to an objection under Clause 4.6. This would be consistent with Council's intention.

5. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), sets out 5 ways of establishing that compliance is unreasonable or unnecessary as follows:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The 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.....

43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

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.....

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.....

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.....

A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.....

However, care needs to be taken not to expand this fifth way of establishing that compliance is unreasonable or unnecessary beyond its limits. It is focused on "particular land" and the circumstances of the case. Compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the particular land is found to be unreasonable or inappropriate. If the particular land should not have been included in the particular zone, the standard would not have applied, and the proposed development would not have had to comply with that standard. To require compliance with the standard in these circumstances would be unreasonable or unnecessary.

50 However, so expressed, this way is limited. It does not permit of a general inquiry into the appropriateness of the development standard for the zoning. An objection would not be well-founded by an opinion that the development standard is inappropriate in respect of a particular zoning (the consent authority must assume the standard has a purpose).....

The requirement that the consent authority form the opinion that granting consent to the development application is consistent with the aims of SEPP 1 as set out in clause 3 (one of which is the promotion and coordination of the orderly and economic use and development of land) makes it relevant "to consider whether consent to the particular development application encourages what may be summarised as considered and planned development" or conversely may hinder a strategic approach to planning and development."

Set out below is an analysis of the standard, having regard to the principles enunciated in both the Winten and Wehbe judgements as applicable:

Comments:

The existing building is a longstanding development on the North Steyne promenade, reflecting Council's desired character for the area as promoted in the Manly LEP 2013 which prescribes a maximum FSR of 1.5:1 and a maximum height limit of 13m for the area. The building complies with the height limit for the site.

The existing FSR is acknowledged by Council's staff as non-compliant, however the building is deemed acceptable and is supported in its current context in relation to its bulk, scale and general appearance.

The site has a prominent corner location, three road frontages and frontage to the tourist hub of North Steyne promenade. These site characteristics create the opportunity to have a visually attractive building that essentially 'hugs the corners' of the street and optimises outlooks towards the beach. Council has accepted this premise for this site in the past. It is purported that this has not changed and the overall development should be assessed more in terms of the outcomes of its street appeal and context than compliance with a numerical standard (in this particular case). The building is directly opposite the substantial and imposing heritage listed North Steyne Surf Club. The subject site, known as Bella Vista Apartments, is a complementary landuse to the surf club as well as the North Steyne beachfront.

It is impossible to restrict the existing building to strict compliance with the prescribed numerical FSR in this case as the development already breaches the development standard. The change in the percentage of non-compliance and impact of the

additional floor area on the overall bulk, scale and streets appeal and appearance of the building is a more reasonable assessment of the variation. The percentage variation is 6.7% gfa, dispersed across five (5) habitable floor levels, equating to average of less than 40sqm per floor level. Further, the majority of this additional floor result from incremental increases required to 'straighten' the front elevation of the building, aligning it in parallel to the front property boundary. In relation to the overall size and design of the building, the change in gross floor area is negligible.

The building does not draw attention to itself beyond that reasonably expected on this corner site. It remains in context with the approved height, bulk and scale of surrounding built form. Further it remains respectful of the North Steyne Surf Life Saving Club at the end of Pine Street. There is no attempt to emulate the design, colours or materials of the surf club, rather the proposed works to the apartments provide a modern, vibrant street appearance that is complementary to the surf club.

The increased gross floor area does not result in any additional overshadowing of private or public property. Being a corner site, located on the north-western corner with the majority of the floor space additions located on the eastern elevation, there are no shadowing impacts.

In terms of view sharing, the front setbacks continue to allow view sharing across boundaries. The property to the north of the subject site have their primary balcony views to the east – towards the beach. However, due to wrap-around corner balconies there are some secondary outlooks to the southeast.

The proposed extension of the north-east corners of the habitable levels of the building move the external corner of the building out to create a squarer, crisper edge and return to the building. A minor loss of view may result, however, this is considered acceptable given the range of view lines and outlooks retained by the neighbouring units.

6. Are there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is consistent with the established height, bulk and scale of development within the immediate vicinity.

Strict application of the current FSR of the building would prevent achievement of the proposed update and improvements to the building which are considered to outweigh the application of the numerical standard in this instance.

The increased floor area of the building does not result in any significant adverse impacts. The upgrades and improvements to the onsite private open space, amenity for residents, opportunities for increased passive surveillance of the street and public realm from the larger balconies and modernization of the building appearance is a considered a positive for the wider community, both socially and economically.

New, refreshed and updated buildings in prominent tourist locations are generally interrupted as a positive economic environment and dynamic place to be, hence drawing on the national and international attraction of the Manly beachfront area.

7. Is it consistent with the objectives of the standard and objectives for the zone?

The Land and Environments Courts recent position in considering consistency with objectives, is the adoption of *Pearlman J in Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21 where, Her Honor expresses the following opinion [at 27]:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show

that the development promotes or is ancillary to those objectives, not even that it is compatible.

The objectives of the FSR standard are:

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

Comments:

- *The proposed building is consistent with the prevailing established and likely future character of buildings and heights in the immediate locality.*
- *The bulk and scale of the development has been appropriately managed by accepted design techniques including variation to texture, materials and colours.*
- *The height of the building, the other half of the tool adopted by Council to control bulk and scale, is complied with;*
- *The increase in FSR does not have a significant impact on views to the beach from nearby residential development.*
- *Views between the streets and the beach are not significantly affected by the proposal.*
- *Solar access to public open spaces and adequate sunlight access to private open spaces and to habitable rooms is maintained.*

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments:

The existing building caters for temporary residential accommodation, rather than permanent full-time rentals and/or owner-occupiers. This provides a significant service to the tourist market that visits Manly on an annual basis. The proposed works aim at updating and revitalizing the building in line with current trends that seek good quality indoor-outdoor recreation and entertainment areas, clean crisp architectural lines and a squarer more contemporary appearance of elements and features of buildings. This will further enhance the ongoing role of Manly in the provision of tourist accommodation to national and international visitors. Longer term (up to 3 month) stays are accommodated onsite adding variety and diversity to the accommodation offered. There is no overall change to the number of units or bedrooms within the complex.

8. Conclusion

The breach of the development standard does not raise any matter of significance (other than a positive one) for the proposal and surrounding properties, nor is it contrary to the public interest or raise any matter which would be of State or Regional Significance other than as discussed above. In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.

As detailed above, there are sufficient environmental planning grounds to justify the contravention of the FSR development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the North Steyne foreshore area.

Whilst the existing and proposed non-compliance with the numerical FSR standard is acknowledged, the development is compatible and consistent with the likely future bulk, scale and form of adjoining and surrounding developments within the locality, and the variation will be well absorbed within the context of the approved and surrounding built form and not be readily perceptible. There is no reasonable argument as to why strict application of the FSR standard should be applied for the subject site and the development given the circumstances outlined.

The breach of the development standard does not cause any significantly detrimental impacts to surrounding properties which in isolation would warrant strict adherence to the current, non-conforming

FSR. The proposal is in the public interest and the proposal form is commensurate with that of adjoining and surrounding residential developments. Whilst the proposed breach may be considered numerically significant (being over 10%), the additional floor area is contained within the existing overall footprint of the existing building.

In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

As detailed above, there are sufficient environmental planning grounds to justify contravening the development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the area. The additions and alterations do not result in an inconsistent built form in this particular part of the locality given the number of three, four and six storey developments in close proximity to the property.

Critically, the additional gross floor area does not block any existing available public or private views towards North Steyne beach and nor does it result in overshadowing impacts to western or southern adjoining neighbours (over and above any existing impacts). As the above submission demonstrates that:

- compliance with the development standard are unreasonable or unnecessary in the circumstances of the case; and*
- there are sufficient environmental planning grounds to justify contravening the development standard; and*
- the matters required to be demonstrated by 4.6(3) have been addressed;*
- 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, The variation to the standard is worthy of support, which is fundamental to the approval of the development application."

- (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

Comment: The applicant's written request adequately addresses the relevant matters.

- (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.

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. The proposed variation is greater than 10%, is consistent with the objectives of the zone and therefore is required to be determined by the Northern Beaches Local Planning Panel.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposed development is consistent with the objectives and controls of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.4	Stormwater Management	Yes	Yes	The proposed development is consistent with the objectives and controls of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed development is consistent with the objectives and controls of Clause 6.9 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	NA	
Landscape/Tree Preservation	NA	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposed development retains a front setback of 4m, consistent with the existing building line along North Steyne, thereby reducing the visual impact of walls along the main street frontage. The proposed development does not alter the existing fencing along the main street frontage. The existing car parking arrangement (entry via the rear lane) remains unchanged by the proposed development.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed development complements the existing streetscape character, as the street contains a number of residential flat buildings of comparable or greater scale.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

No changes are proposed to the existing front fence or the existing landscaped area along the main street frontages of the site.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The subject site is not heritage listed. The proposed development is within the vicinity of heritage-listed Item 2 Stone Kerbs and Item 174 Beach Reserve—Merrett Park North Steyne and South Steyne. The proposed development is consistent with and complements the existing streetscape character, as the street contains a number of residential flat buildings of comparable or greater scale. The proposed development does not impact upon the heritage-listed stone kerbs. As such, the proposed development does not unreasonably impact upon the heritage significance of the nearby heritage-listed items.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Not applicable. The subject site is not a heritage item (or a potential heritage item), does not alter a heritage item and is not within a heritage conservation area.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposed development is of an appropriate form and design so that it does not unreasonably impact upon the significance of the nearby heritage items.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Not applicable. The proposed = development does not involve infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Not applicable. The subject site is not a heritage item (or a potential heritage item), does not alter a heritage item and is not within a heritage conservation area.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposal provides equitable access to light and sunshine in that the development involves external of a reasonably minor nature, and does not eliminate more than one third of the sunlight available to existing surrounding developments. The additional overshadowing resulting from the development predominantly falls to the street, rather than to adjacent or nearby properties.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

As above, the additional shadow resulting from the proposed development predominantly falls to the street, rather than to adjacent or nearby properties. The proposed additional shadow does not unreasonably impact upon sunlight access to the private open spaces and windows of adjacent and nearby properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposed development retains an adequate level of building modulation with the retention of balcony and terrace spaces. The proposal generally retains existing setbacks.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed development minimises the loss of privacy to adjacent and nearby development with the inclusion of privacy screening, particularly to the terrace and balcony spaces that are orientated to adjacent or nearby dwellings in order to prevent overlooking. Further, the dimensions of the balcony and terrace spaces that are orientated to adjacent or nearby properties are generally unchanged from the existing development and therefore do not increase their usability. In these ways, the proposed development is appropriately designed for privacy and mitigates direct viewing between properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposed development provides adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed development retains and extends balcony spaces along the two main street frontages of the site (North Steyne and Pine Street), thereby encouraging neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposed development allows for view sharing for residents of the existing adjacent buildings and the proposed building in that the existing height is retained and the existing setbacks are generally retained. As such, the existing building envelope is generally retained. Setbacks that are altered do not lead to unreasonable view loss.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

As above, the existing building envelope is generally retained. As such, the proposed development does not result in unreasonable view loss to and from public spaces.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Given the existing building envelope is generally retained, the proposed development does not result in unreasonable view loss or view creep.

Part 4 - Development Controls

Site Area:	1,335m ²	Permitted/ Required	Proposed	Complies Yes/No
Wall height North side		12m	14.25m	Yes – Existing
South side		12m	14.25m	Yes – Existing
Number of Storeys		3	5	Yes – Existing
Roof height		2.5m	Flat roof	Yes
Setback Front		6.0m or streetscape	500mm-4m	Yes – Consistent with streetscape
North setback side – Ground Floor		1/3 wall height (1.09m)	0-4.9m	Yes – Existing
North setback side – First Floor		1/3 wall height (2m)	0-2.27m	Yes – Existing
North setback side – Second Floor		1/3 wall height (2.86m)	0-2.27m	Yes – Existing
North setback side – Third Floor		1/3 wall height (3.86m)	0-2.27m	Yes – Existing
North setback side – Fourth Floor		1/3 wall height (4.75m)	6-7m	Yes
South setback side – Ground Floor		1/3 wall height (1.09m)	364mm-2.6m	Yes – Existing
South setback side – First Floor		1/3 wall height (2m)	400mm-2.1m	Yes – Existing
South setback side – Second Floor		1/3 wall height (2.86m)	400mm-2.1m	Yes – Existing
South setback side – Third Floor		1/3 wall height (3.86m)	400mm-2.1m	Yes – Existing
South setback side – Fourth Floor		1/3 wall height (4.75m)	550mm-2.175m	No. See comment below.
Setback Rear		8.0m	0-3.25m	Yes – Existing
Open space - total		Min. 45% of Site Area (600.75m ²)	88% (1,175.5m ²)	Yes
Open space - landscaped		Min. 25% of Total Open Space (293.87m ²)	4.7% (55m ²)	Yes – Existing
Open space - above ground		Max. 40% of Total Open Space (470.2m ²)	71.7% (843.3m ²)	No. See comment below.
Private Open Space	12m ² per dwelling		Units 2-4, 6-10 and 12-22: >12m ²	Yes
			Units 1,5 & 11: <12m ²	No. See comment below.

Comment:

4.1.4 Setbacks (front, side and rear) and Building Separation

Clause 4.1.4.2 of the MDCP 2013 requires that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed development seeks non-compliant southern side setback of between 550mm-2.175m (4.75m required).

Objective 1) 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.

The proposed non-compliant side setback is consistent with and complementary to existing and recently approved developments along the streetscape. As such, the desired spatial proportions of the street, the street edge and the landscape character of the street are maintained.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed development does not unreasonably impact upon traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. This is detailed further in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls – Open Space and Landscaping. The subject site does not contain urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.

The subject site is not within an area of bushfire prone land.

4.1.5 Open Space and Landscaping

Clause 4.1.5.1 of the MDCP 2013 requires that the subject site provide a maximum of 40% of the total open space as open space above ground. The proposed development incorporates 843.3sqm of open space above ground, equating to 71.7% of the total open space.

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

The subject site is level and is currently predominantly built upon or paved. The existing landscaped area remains unchanged by the proposed development. As such, the proposed development does not unreasonably impact upon important landscape features that exist on site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

As above, the subject site is level and is currently predominantly built upon or paved. The existing landscaped area remains unchanged by the proposed development.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

The amenity impacts (sunlight, privacy, and views) resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

As above, the open space currently available on the subject site is predominantly hard and impervious. The proposed development does not impact upon existing landscaped open space, thereby retaining the existing level of water infiltration on site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

The proposed development is adequately landscaped so as not encourage the spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

The proposed development provides adequate landscaped spaces for wildlife habitat and corridors.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the visual aesthetic amenity of the area.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed development is suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with no submissions received.

79C(1) (e) - the public interest.

The proposed development is in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposed development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standards contained in Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 272/2017 for alterations and additions to an existing Residential Flat Building at 96 North Steyne, Manly be **Approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 272/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA0010 Site Plan & Analysis	Issue A 21 Nov. 2017	Squillace Architects
DA1002 Basement Floor Plan	Issue A 21 Nov. 2017	Squillace Architects
DA1003 Demolition / Proposed Ground Floor Plan	Issue A 21 Nov. 2017	Squillace Architects

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DA1004 Demolition / Proposed Levels 1 and 2 Floor Plan	Issue A 21 Nov. 2017	Squillace Architects
DA1005 Demolition / Proposed Level 3 Floor Plan	Issue B 6 February 2018	Squillace Architects
DA1006 Demolition / Proposed Level 4 Plan	Issue A 21 Nov. 2017	Squillace Architects
DA1007 Demolition / Proposed Roof Plan	Issue A 21 Nov. 2017	Squillace Architects
DA2000 Proposed Elevations West & North	Issue A 21 Nov. 2017	Squillace Architects
DA2001 Proposed Elevations East & South	Issue A 21 Nov. 2017	Squillace Architects
DA3000 Building Section AA	Issue A 21 Nov. 2017	Squillace Architects

Reference Documentation relating to Development Consent No. 272/2017:

- BASIX Certificate No. 880579M prepared by Outsource Ideas P/L
- Accessibility Assessment Report prepared by City Plan Services dated 27 November 2017
- Certificate of Compliance prepared by Better Fire Protection Pty Ltd dated 13 September 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - in the case of work for which a principal contractor is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out

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unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

GENERAL CONDITIONS RELATING TO APPROVAL

ANS01

Erosion and Sediment controls must be installed in accordance with the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1 (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed.

Reason: To protect the surrounding environment and waterways from the effects of sedimentation and erosion from the site.

1A (1AP04)

Alteration and demolition of the existing building is limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is not shown to be altered or demolished.

Reason: To ensure compliance with the approved development.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

ANS02

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

ANS03

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development.

ANS04

A Construction Management Program shall be prepared which includes the following:

- (a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- (c) Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

2A (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

3 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

4 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

5 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

6 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

7 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

8 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

9 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

10 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

11 (3LD01)

All healthy trees and shrubs identified for retention on the submitted landscape drawing are to be suitably marked for protection before any construction works start.

Reason: To ensure the trees conditioned to stay on the site are suitably protected during any construction works.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

ANS05

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations. Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the beach zone or ocean.

Reason: To ensure that building associated material/waste and pollution does not mobilise into the adjacent beach.

12 (4AP02)

A copy of all stamped approved drawings, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, public information and to ensure ongoing compliance.

13 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.

- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

14 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

15 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

16 (4LD02)

All healthy trees and shrubs identified for retention on the drawing are to be:

- (a) suitably protected from damage during the construction process, and
- (b) retained unless their removal has been approved by Council.

Reason: This is to ensure that the trees on the site which do not have approval to be removed on the site are suitably protected during any construction works.

Internal Note: This condition is to be imposed with 3LD01.

17 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

18 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

19 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

ANS06

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a chartered professional engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

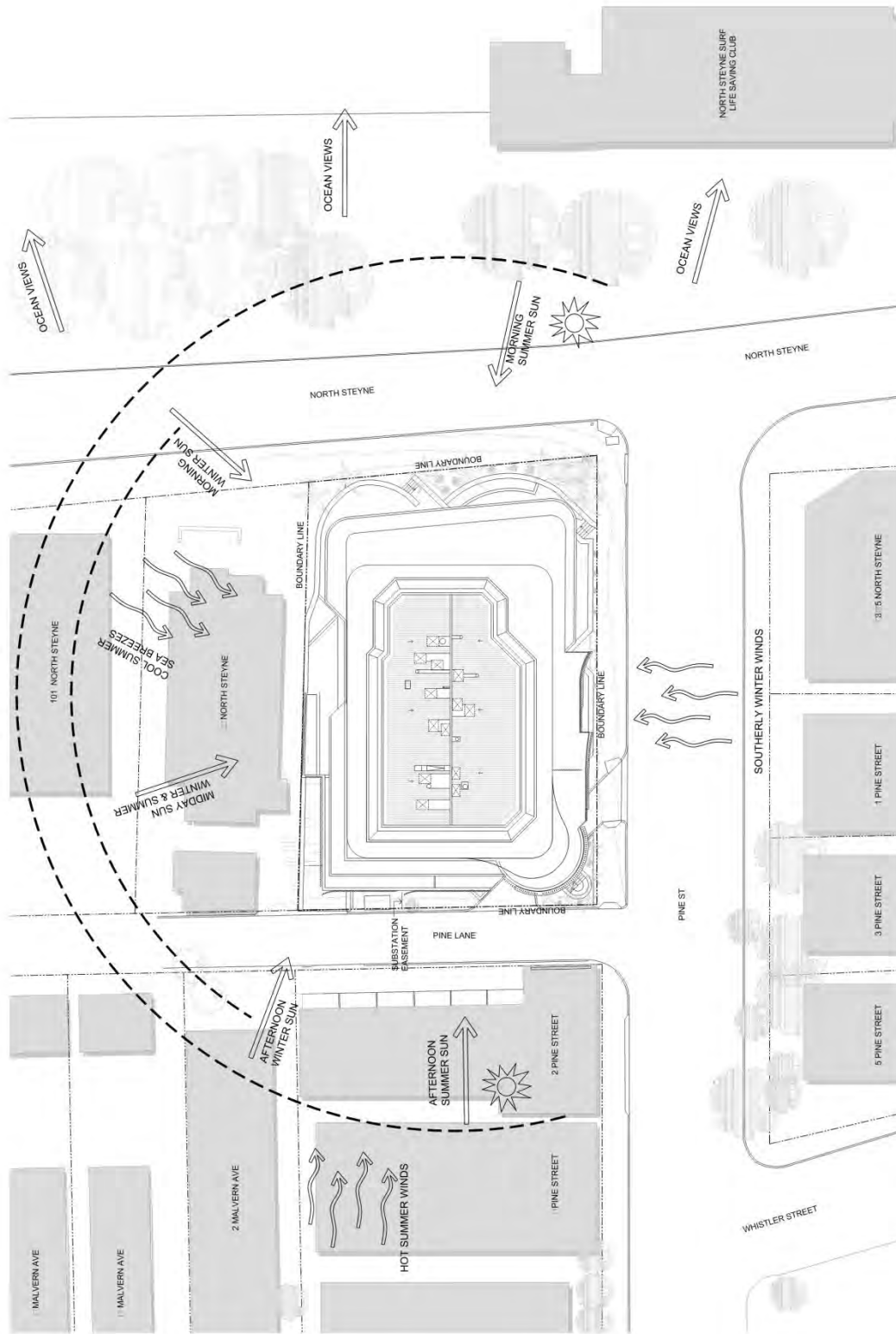
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

20 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.



1 SITE PLAN & ANALYSIS



TERMS:
DEVELOPMENT APPLICATION
This is a Development Application (DA) for the construction of a new building. The DA is subject to the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2007.

ISS. DATE: 21.11.17
PURPOSE OF ISSUE: DEVELOPMENT APPLICATION

NOTES:
1. SITE PLAN & ANALYSIS

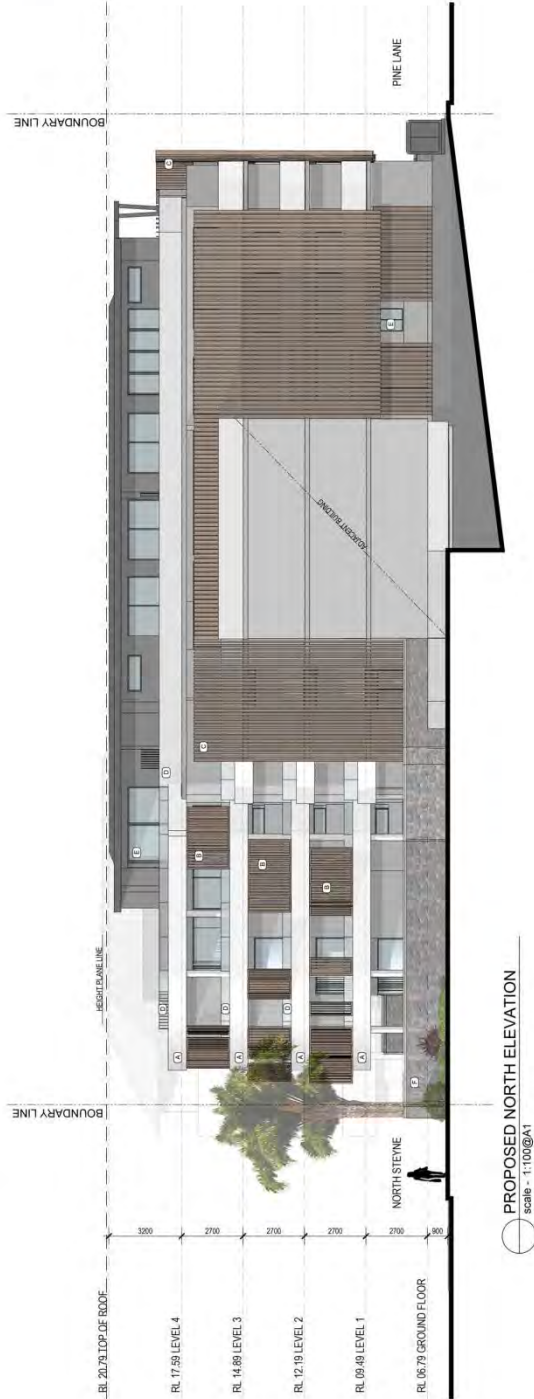
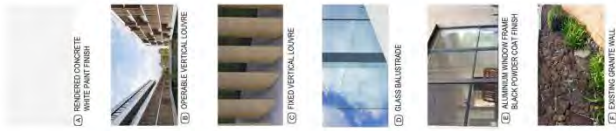
PROJECT: BELLA VISTA APARTMENTS
100 North Steyne
Pine St
CECIL KOUTOS

ARCHITECTS:
INTERIOR DESIGNERS
squillace.com.au

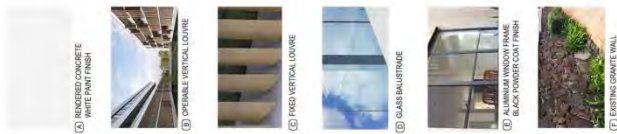
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DA0010
VS
1.300841
1.400843
SITE PLAN &
SITE ANALYSIS

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<p>STATUS DEVELOPMENT APPLICATION</p> <p><small>This sketch is copyright. Apart from any use permitted by law, no part may be reproduced by any means, nor may any other material right be exercised, without the prior written permission of the copyright owner.</small></p> <p>RP Rural Planning Institute of Australia</p>	<p>ISS A</p>	<p>DATE 21.11.17</p>	<p>PURPOSE OF ISSUE DEVELOPMENT APPLICATION</p>	<p>NOTES</p>	<p>PROJECT BELLA VISTA APARTMENTS 98 North Steyne Marrity</p>	<p>CLIENT CECIL KOUTSOS</p>	<p>ARCHITECTS INTERIOR DESIGNERS squillace.com.au</p>	<p>STREET 98 North Steyne, Marrity VIC 3113</p>	<p>PROJECT DA2000 A</p>	<p>ISSUE A</p>	<p>SCALE 1:100@A1 1:250@A3</p>	<p>CHECKED BY V5</p>	<p>DATE 21.11.17</p>
	<p>DRAWING TITLE PROPOSED ELEVATIONS WEST & NORTH</p>	<p>DRAWING NO. DA2000 A</p>	<p>SCALE 1:100@A1 1:250@A3</p>	<p>CHECKED BY V5</p>	<p>DATE 21.11.17</p>	<p>PROJECT BELLA VISTA APARTMENTS 98 North Steyne Marrity</p>	<p>CLIENT CECIL KOUTSOS</p>	<p>ARCHITECTS INTERIOR DESIGNERS squillace.com.au</p>	<p>STREET 98 North Steyne, Marrity VIC 3113</p>	<p>PROJECT DA2000 A</p>	<p>ISSUE A</p>	<p>SCALE 1:100@A1 1:250@A3</p>	<p>CHECKED BY V5</p>



PROPOSED EAST ELEVATION (NORTH STEYNE)
scale - 1:100@A1



PROPOSED SOUTH ELEVATION (PINE STREET)
scale - 1:100@A1

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STATUS
DEVELOPMENT APPLICATION

Do not rely on this drawing for construction. It is for information only. It is not to be used for construction.

ISS **DATE** **PURPOSE OF ISSUE**
A **21.11.17** **DEVELOPMENT APPLICATION**

NOTES

AS **1:100 @ A1**
AT **1:100 @ A1**

PROJECT **BELLA VISTA APARTMENTS**
36 North Steyne
CLIENT **CECIL KOUTSOS**

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DRAWING NO. **DA2001**
ISSUE **A**
DRAWN BY **VS**
CHECKED BY **VS**
SCALE **1:100@A1**
DATE **21.11.17**
DRAWING TITLE **PROPOSED ELEVATIONS EAST & SOUTH**

ITEM 3.5	DA255/2017 - 1B EDGECLIFF ESPLANADE SEAFORTH - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE
REPORTING OFFICER	Ben Price
TRIM FILE REF	2018/199326
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA255/2017 for Alterations and additions to the existing dwelling house at Lot 1 DP 854513, 1B Edgecliff Esplanade, Seaforth subject to the conditions and for the reasons set out in the Assessment Report.



northern
beaches
council

Northern Beaches Local Planning Panel Report

2018/107693

DA #	255/2017
Site Address	1B Edgecliff Esplanade Seaforth; Lot 1 DP 854513
Proposal	Alterations and additions to the existing dwelling house.
Officer	Ben Price

SUMMARY:

Application Lodged:	10 November 2017
Applicant:	A & D Dwyer
Owner:	A & D Dwyer
Estimated Cost:	\$343,000
Zoning:	MLEP, 2013 – R2 Low Density
Heritage:	Not applicable
NSW LEC:	Not applicable
Notification:	14 November 2017 – 30 November 2017
Submissions received:	Nil
Site Inspected:	11 January 2018
LEP (4.6) Variations proposed:	4.3 Height of Buildings, 4.4 Floor Space Ratio
DCP Variations proposed:	4.1.2 Height of Buildings, 4.1.4 Setbacks (front, side and rear) and Building Separation, 4.1.5 Open Space and Landscaping
Recommendation:	Approval

Subject Property and surrounding area



R1, R2, R3, E3 & E4 Zones

1 of 21

The subject property is commonly known as 1B Edgecliffe Esplanade and legally known as Lot 1 in DP 854513. The site is located on the southern side of Edgecliffe Esplanade. The property is a battle axe lot that is irregular in shape and has a frontage of 18.105 m to Edgecliffe Esplanade, an average depth of 21m and an overall site area of 415.4m². The property currently contains a 3 storey dwelling with vehicular access via an existing driveway from Edgecliffe Esplanade to an existing Garage attached to the existing dwelling. The property slopes from north to south and includes a crossfall of 10m.

The surrounding area predominantly consists of residential accommodation.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

There is no history or background relevant to this application.

Description of proposed development

The proposal includes:

Roof

- Alterations to garage roof

Level 3

- New Entry and vestibule
- Studio

Level 2

- Internal Alterations
- Infill of windows on the east and west elevations
- Infill wall on eastern elevation of balcony
- Vergola

Level 1

- Internal alterations
- Addition to bedrooms 1 and 2
- Infill window on west elevation

Internal Referrals

No internal referrals were required.

External Referrals

AUSGRID

The proposal was referred to the AUSGRID. No comments were received within 21 days. Concurrence is assumed.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
- (i) *any environmental planning instrument, and*

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

Satisfactory

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

The subject site is located in Zone R2 Low Density Residential under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R2 Low Density Residential

Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.

The proposal will maintain the existing residential use of the site and continue to provide for the housing needs of the community.

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

Not applicable

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	Existing: 10.8m Proposed: Studio 9.3m- 10.2m Garage 11m	No	No, See comments below.
4.4	Floor Space Ratio	0.4:1 166.16m ²	Existing: 0.56:1 236.5m ² Proposed: 0.659:1 274m ²	No	No, See comments below.

4.6 Exceptions to development standards

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	8.5m
Proposed	9.3m - 11m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	29% variation 27% existing

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed development will present to Edgecliff Esplanade as a single storey building due to the slope of the land. The proposal is of a consistent bulk and scale of the neighbouring properties, in particular 2C Edgecliffe Esplanade. The proposed development is consistent with the topographic landscape, prevailing building height and desired future streetscape character of the locality.

- (b) *to control the bulk and scale of buildings,*

Comment: The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

- (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),*

Comment: The proposal will not result in any unreasonable disruption of views.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The proposal will result in minor additional overshadowing. The development will maintain an equitable access to light and sunshine within the locality and the neighbouring properties will retain adequate access to sunlight to the private open spaces and habitable rooms.

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

Comment: Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of Zone R2 Low Density Residential:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposal will maintain the existing residential use of the site and continue to provide for the housing needs of the community.

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

Not applicable

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

- (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.*

Comment: The proposed development is consistent with the neighbouring development and will not result in any unreasonable impacts within the locality. The proposed degree of flexibility is appropriate in this circumstance.

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

Comment: The proposal will achieve a greater floor area while maintaining the streetscape and amenity of the locality.

- (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.

- (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.*

Comment: The application was accompanied by a written request to vary the development standard that provided the following justification to demonstrate compliance with the development standard is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard:

"CLAIM FOR VARIATION

BUILDING HEIGHT

Although the existing building and proposed studio addition would technically breach the maximum Building Height numeric control, the development would satisfy the objectives outlined in the LEP, specifically:

4.3(1) (a)

The development's varying building heights are detailed to respect the site's existing topography. The proposed new skillion roof forms and exterior alterations are in keeping with developments along the streetscape and with the residential character of the local area.

Due to the natural topography, established building heights vary significantly along the streetscape and local area, some of which would exceed the relevant height clause. The proposed development is consistent with the existing and desired future character of the local neighbourhood.

4.3(1) (b)

To minimise the development's overall bulk and scale, the proposed rear studio addition is situated on the southwest corner of the Level 3 terrace. When viewed from the west side elevation, the studio addition is perceived as a detached structure, separated from the garage's rear wall by 1.2 metres, with its roof height at least 1.35 metres below the garage roof level.

The new skillion roof forms will remove the existing excessive roof bulk, and improve its street presence when viewed from the adjoining public domain.

4.3(1) (c)

The proposed development will not disrupt views to nearby residential development from neighbouring public spaces, or from nearby residential development to neighbouring public spaces, or views between public spaces.

The proposed studio addition is lower than the street level (garage) building height (by at least 1.35 metres) and will not reduce or adversely impact on existing views to the harbour foreshore from neighbouring residential properties.

4.3(1) (d)

The proposed development will not reduce or adversely impact on the current level of solar access to adjoining and neighbouring buildings or their private open spaces; refer to submitted Shadow Diagrams (ARK889-SH-1).

The proposed development will not alter or adversely impact on the current level of visual and acoustic privacy, nor create visual intrusion to neighbouring properties.

4.3(1) (e)

Not applicable.

CONCLUSIONS

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height and floor space ratio development standards, and
- c) that having regard to (a) and (b) above, compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and
- d) that given the design quality of the development, and the development's ability to comply with the zone and development standard objectives, approval would not be antipathetic to the public interest, and
- e) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, it is considered that there is no statutory or environmental planning impediment to the granting of variations to the building height and floor space ratio development standards."

- (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*

Comment: The applicant's written request has adequately addressed the matters required to be demonstrated by subclause.

(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.*

Comment: For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density residential zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument, where the variation to a numerical standard is not greater than 10%. In this regard, given the variation of 29% and the proposals consistency with objectives of the zone, the application is referred to the Local Planning Panel with a recommendation of approval.

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	0.4:1 166.16m ² Existing 0.56:1 236.5m ²
Proposed	0.659:1 274m ²
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	64% variation on development standard 22.6% further variation to development standard.

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 2013 are:

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

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

Comment: The proposed development will present to Edgecliffe Esplanade as a single storey building. The bulk and scale of the development will be consistent with the neighbouring properties, in particular 2C Edgecliffe Esplanade. The proposal will maintain the existing streetscape character within the locality.

- (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,*

Comment: The proposed density and bulk is consistent with the surrounding properties and the proposal will not obscure any important landscape or townscape features.

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

Comment: The proposal is consistent with the character of the area and is over the existing developed area. The proposal will not result in any unreasonable impacts on the character or landscape character of the area.

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

Comment: The proposal will not result in any unreasonable adverse environmental impacts on the use or enjoyment of the adjoining land or the public domain.

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

Comment: Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of Zone R2 Low Density Residential:

- *To provide for the housing needs of the community within a low density residential environment.*

The proposal will maintain the existing residential use of the site and continue to provide for the housing needs of the community.

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

Not applicable

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment: The proposed floor space ratio will maintain the streetscape character of the locality and will not result in any unreasonable impacts on the amenity of the surrounding properties. The proposed degree of flexibility is satisfactory in this circumstance.

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

Comment: The proposal will not result in any unreasonable impacts to the locality and will provide greater floor area to the site. The proposed flexibility is satisfactory in this circumstance.

- (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.

- (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.*

Comment: The application was accompanied by a written request to vary the development standard that provided the following justification to demonstrate compliance with the development standard is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard:

FLOOR SPACE RATIO

Although the existing building and proposed addition would technically exceed the Floor Space Ratio numeric control, the development would satisfy the objectives outlined in the LEP, specifically:

4.4(1) (a)

The proposed increase in gross floor area will have no legible impact on the building's bulk and scale when viewed from Edgecliffe Esplanade. The building's use of significant articulation and varying roof heights assist with its perception of scale from neighbouring properties and the adjoining public domain.

The proposed street level alterations will improve the aesthetic character of the existing building and its presentation to the local streetscape. The building, whilst exceeding the FSR numeric control, is compatible with the existing and desired future neighbourhood character.

4.4(1) (b)

The proposed development will not obscure important landscape and townscape features. Existing views to the harbour from the adjoining public domain will not be compromised.

4.4(1) (c)

The development will not adversely impact on the visual relationship between the existing building and the character of its immediate surroundings. The proposed exterior alterations and addition will enhance the buildings architectural character and improve its connection with the local streetscape and neighbouring dwellings.

Given that the additional floor area is created within the existing building footprint and to the rear of the building, there is limited potential for adverse impacts on the existing open landscaped area and visual amenity.

The development also includes the creation of large planter garden bed (on the Level 3 terrace) to improve the current level of landscaped vegetation on site and its relationship with the street-front landscaping.

4.4(1) (d)

The proposed development will not create adverse environmental impacts, nor impede on the use or enjoyment of the adjoining public domain.

4.4(1) (e)

Not applicable.

The FSR is acceptable given that it is contained within the existing building footprint and there are sufficient planning grounds to justify the departure to the FSR control. Strict compliance with the standard is not considered reasonable in this instance given that the breach is existing (in part) and the additional GFA does not impact on the streetscape, amenity, or character of the area and as a result satisfies the objectives of the development standard.

CONCLUSIONS

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and*
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height and floor space ratio development standards, and*
- c) that having regard to (a) and (b) above, compliance with the development standards is unreasonable or unnecessary in the circumstances of the case, and*
- d) that given the design quality of the development, and the development's ability to comply with the zone and development standard objectives, approval would not be antipathetic to the public interest, and*
- e) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.*

As such, it is considered that there is no statutory or environmental planning impediment to the granting of variations to the building height and floor space ratio development standards.

- (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*

Comment: The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

- (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.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument, where the variation to a numerical standard is not greater than 10%. In this regard, given the variation of 64% and the proposals consistency with objectives of the zone, the application is referred to the Local Planning Panel with a recommendation of approval.

Part 5 Miscellaneous Provisions

There are no relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.4	Stormwater Management	Yes	Yes	The proposal complies with this clause.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal complies with this clause.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposal will replace the existing flat garage roof with a skillion roof. The modification to the car parking will not result in any unreasonable impacts in the locality. There are no proposed front walls or fences.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed development will maintain the bulk and scale of the development as perceived from Edgecliffe Esplanade. The proposed alterations to the frontage will not result in a built form that is incompatible with the existing streetscape. The proposal will not result in any unreasonable impacts on the streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

There are no proposed front walls or fences.

3.4.1 Sunlight Access and Overshadowing

Objective 1) To provide equitable access to light and sunshine.

The proposal will result in an increase in overshadowing due to the proposed studio and roof alterations. The increase in overshadowing is minor and the neighbouring properties will maintain adequate solar access to private open spaces and windows to habitable rooms.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The proposal will result in an increase in overshadowing due to the proposed studio and roof alterations. The increase in overshadowing is minor and will maintain adequate solar access to private open spaces and windows to habitable rooms.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

The proposal is designed to ensure adequate penetration of winter sunlight to windows, living rooms and principal outdoor areas of the development site and the neighbouring properties.

3.4.2 Privacy and Security

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposal subject to the conditions of consent is adequately designed to maintain the privacy of the neighbouring properties. The proposed study includes a window orientated to face the south. The low sill height and setback from the rear boundary will result in unreasonable overlooking of the private open space of the property directly to the south. A condition of consent is recommended to require this window be amended to have a minimum sill height of 1m. This will limit downwards looking and minimise loss of privacy to the adjacent development.

The proposed vergola is located over the existing terrace and includes further screening on the eastern elevation. The proposed vergola on Level 02 will not result in any unreasonable privacy impacts to the neighbouring properties.

The proposed addition to level 1 is to the bedrooms and will not create any further privacy impacts within the locality.

The proposed development is adequately designed to ensure no unreasonable impacts to the neighbouring properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The proposal will ensure an appropriate level of privacy and maintain access to light and air within the locality.

Objective 3) To encourage awareness of neighbourhood security.

The proposal is adequately designed to encourage neighbourhood security.

Part 4 - Development Controls

Site Area:	415.4m ²	Permitted/ Required	Proposed	Complies Yes/No
Wall height East side		1:4+ 8m	9.85m	No
West side		1:4+ 8m	9m	No
Number of Storeys		2	3	No
Roof height		Max. 2.5m	Max.0.85m	No
Setback Front		6.0m	Existing Garage 2.8m Proposed vestibule 4.8m	No
East setback side		3m	1.46m	No
West setback side		Vestibule 3.28m In-fill stud wall 1.86m	Vestibule 4.1m In-fill stud wall 1.47	No
Setback Rear		8.0m	Existing Lower Ground Floor Terrace 0.5m Existing Lower Ground Floor 2.82 Proposed Lower Ground Floor 2.82 Existing Mid Ground Floor Terrace 2.4m Proposed Mid Ground Floor Vergola 2.4m Proposed Upper Ground Floor Study 5m	No
Open space - total OS4		Min. 60% of Site Area (249.24m ²)	28% (117.58m ²)	No
Open space - landscaped		Min. 40% of Total Open Space (47m ²)	18.8% (22.16m ²)	No
Open space - above ground		Max. 25% of Total Open Space (29.395m ²)	100% (117.58m ²)	No
Number of Endemic Trees		2	0	No
Private Open Space		18m ²	117.58m ²	Yes
Car Parking – Residents		2 spaces	2 spaces	Yes

Comment:

LEP Clause 4.3 Height of buildings

The proposal

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

- (f) *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,*

Comment: The proposed development will present to Edgecliff Esplanade as a single storey building due to the slope of the land. The proposal is of a consistent bulk and scale of the neighbouring properties, in particular 2C Edgecliffe Esplanade. The proposed development is consistent with the topographic landscape, prevailing building height and desired future streetscape character of the locality.

- (g) *to control the bulk and scale of buildings,*

Comment: The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

- (h) *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),*

Comment: The proposal will not result in any unreasonable disruption of views.

- (i) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The proposal will result in minor additional overshadowing. The development will maintain an equitable access to light and sunshine within the locality and the neighbouring properties will retain adequate access to sunlight to the private open spaces and habitable rooms.

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

Comment: Not applicable.

4.1.4 Setbacks (front, side and rear) and Building Separation

Objective 1) 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.

The proposed development on the street frontage includes the replacement of the garage roof and an entry vestibule. The proposed modifications to the street frontage will not result in any unreasonable impacts within the locality. The proposed additions are within the existing building footprint and will not result in any unreasonable impacts on the spatial proportions of the street, street edge and landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

The proposal has been assessed above with regard to Clause 3.4.2 Privacy and Security of the Manly DCP 2013. Subject to the recommended conditions of consent the proposal was found to be satisfactory.

The proposal has been assessed above with regard to the objectives of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. The assessment found that the proposal will not result in any unreasonable overshadowing of the neighbouring properties.

The proposal will not result in any unreasonable impacts on views or vistas within the locality.

The proposal has been assessed above with regard to the objectives of Clause 3.1 Streetscape of the Manly DCP 2013. The assessment found that the proposal would not result in any unreasonable impacts to the streetscape of the locality.

The proposal will maintain the traffic conditions of the area.

Objective 3) To promote flexibility in the siting of buildings.

The proposal will not result in any unreasonable impacts to the locality. The proposed flexibility is considered satisfactory in this circumstance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

The proposal is located on the existing building footprint and will not result in a reduction of the natural features of the site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Not applicable

4.1.5 Open Space and Landscaping

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

The proposal is located over the existing building footprint and will not result in any unreasonable impacts on the landscape features of the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

The proposal will result in a reduction of open space above ground due to the study and addition on the Lower Ground Floor. The proposal is over the existing building footprint and will not result in any reduction of soft landscaped area.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

The proposal has been assessed above in accordance with Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) and was found to be satisfactory. The proposal will not result in any unreasonable impacts on the site, streetscape and surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

The proposal includes appropriate conditions of consent and to ensure stormwater is appropriately disposed.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

The proposal will not result in the spread of weeds or degradations of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

The proposal will not result in the removal of any wildlife habitat.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

The proposal is consistent with the additional matters for consideration within Clause 5.4.1 Foreshore Scenic Protection Area of the Manly DCP 2013.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
Not applicable

79C(1)(a) (iv) - the regulations

The proposal is consistent with the applicable regulations.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposal will not result in any unreasonable impacts on the natural or built environments nor will it result in any unreasonable social or economic impacts within the locality.

79C(1) (c) - the suitability of the site for the development,

The proposal is suitable for the subject site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with no submissions received.

79C(1) (e) - the public interest.

The proposal is consistent with the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
- the dedication of land free of cost, or
 - the payment of a monetary contribution, or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

Comments:

In this case, no s94 contributions are applicable.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 255/2017 for alterations and additions to the existing dwelling house at 1B Edgecliffe Esplanade Seaforth be **approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 255/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
Proposed Alterations to property 1B Edgecliffe Esplanade Seaforth NSW 2092 Sheet 1 of 5	Revision A, dated 18 October 2017	Ark Design Studio Pty Ltd
Proposed Alterations to property 1B Edgecliffe Esplanade Seaforth NSW 2092 Sheet 4 of 5	Revision A, dated 18 October 2017	Ark Design Studio Pty Ltd
Proposed Alterations to property 1B Edgecliffe Esplanade Seaforth NSW 2092 Sheet 5 of 5	Revision A, dated 18 October 2017	Ark Design Studio Pty Ltd

Reference Documentation relating to Development Consent No. 255/2017:

- BASIX Certificate Number A295115 prepared by Ark Design Studio dated 5 October 2017.
- Preliminary Geotechnical Assessment, prepared by Jack Hodgson Consultant Pty Limited and dated 26 October 2017.

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**ANS01**

The southern facing window to the study identified as W2 is to have a minimum solid or opaque sill height of 1m. Amended plans demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To minimise loss of privacy to adjacent and nearby development.

ANS02**External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

3 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

4 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

5 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

6 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

7 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

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17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

8 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

9 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

10 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

11 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.



ITEM 3.6**DA2017/1218 - 38 BEATTY STREET, BALGOWLAH HEIGHTS -
DEMOLITION OF AN EXISTING DWELLING AND
CONSTRUCTION OF A NEW DWELLING HOUSE****REPORTING OFFICER****Tom Prosser****TRIM FILE REF****2018/199368****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan and Elevations**

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/1218 for Demolition of an existing dwelling and construction of a new dwelling house at Lot 19A DP 350345, 38 Beatty Street, Balgowlah Heights subject to the conditions and for the reasons set out in the Assessment Report.



northern
beaches
council

Assessment Report

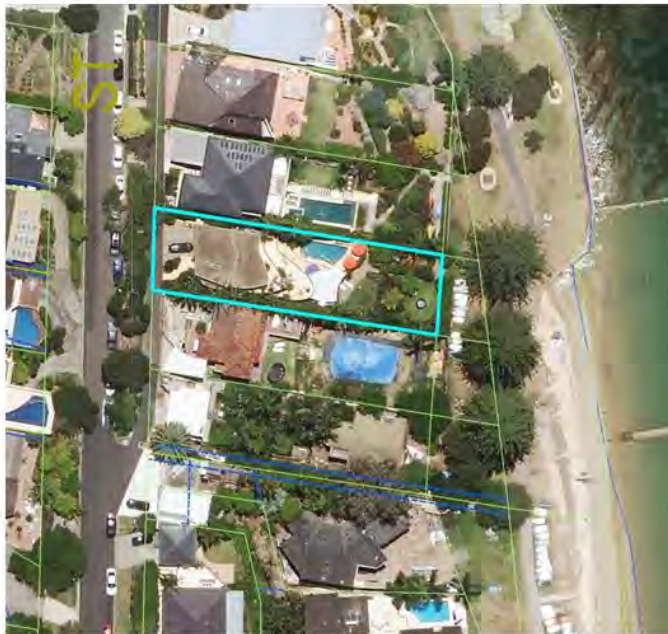
2017/068331

DA #	2017/1218
Site Address	38 Beatty Street, Balgowlah Heights; Lot 19A DP 350345
Proposal	Demolition of an existing dwelling and construction of a new dwelling house.
Officer	Tom Prosser

SUMMARY:

Application Lodged:	14/12/2017
Applicant:	Jon Boucher, B. E. Architecture.
Owner:	David Stevens
Estimated Cost:	\$2,800,000.00
Zoning:	MLEP, 2013 – E3 Environmental Management.
Heritage:	To the rear: I39 –Trees at Forty Baskets Beach
Notification:	21 December 2017 to 29 January 2018
Submissions received:	0
Site Inspected:	22 January 2018
LEP (4.6) Variations proposed:	Building height and FSR
DCP Variations proposed:	Wall height, number of storeys, setbacks and swimming pool height.
Recommendation:	Approval

Subject Property and surrounding area



R1, R2, R3, E3 & E4 Zones

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The subject property is commonly known as 38 Beatty Street, Balgowlah Heights and legally known as Lot 19A in DP 350345. The site is located on the eastern side of Beatty Street. The property is an irregular shape and has a frontage of 15.410m to Beatty Street, an average depth of 54m and an overall site area of 816.9m². The property currently contains a multi-storey dwelling with vehicular access via an existing driveway from Beatty Street to an existing garage to the front of the existing dwelling. The property slopes from the front to the rear and includes an approximate cross fall of 16m.

The surrounding area includes multi-storey dwellings on both sides of Beatty Street. The rear boundary of the site is adjacent to Forty Baskets Beach.

Property Burdens and Constraints

A sewerline bisects the property in the rear half of the site.

Site History/Background

- DA518/2003- Erection of a glazed cabana.

Description of proposed development

The proposal involves demolition of the existing dwelling and construction of a new dwelling house including:

Level 1

- 2 bedrooms
- Guest bedroom
- Cinema room
- Wine storage
- Laundry
- Gym

Level 2

- Kitchen, living room and dining room (in open plan)
- Pantry
- TV room
- WC
- Terrace area to rear

Level 3

- Master bedroom
- Study
- Bathroom

Level 4

- Dwelling entry
- 2 bedrooms with ensuites
- terrace
- Stair and lift access to lower levels

External

- Double garage
- Landscaping
- Swimming Pool
- Outdoor terrace

Internal Referrals

Property Commercial and Tourists Assets

Council's Property Commercial and Tourists Assets offered no objections to the proposal.

Landscaping Comments

Council's Landscape Officer offered no objections to the proposal, subject to the landscape plan provided.

Natural Resources Comments

Council's Natural Resources Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

External Referrals

Aboriginal Heritage

The proposal was referred to the Aboriginal Heritage Office. The following comments have been received:

"Reference is made to the proposed development at the above area and Aboriginal heritage.

No sites are recorded in the current development area. An inspection by the Aboriginal Heritage Office and Council (20/2/18) did not identify any unrecorded Aboriginal sites or areas of potential.

Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development."

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:**
 - (i) any environmental planning instrument, and**

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

The subject site is located in Zone E3 Environmental Management under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone E3 Environmental Management

Objectives of zone

- 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 storm water run-off on the ecological characteristics of the locality, including water quality.
- To ensure that the height of bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

Subject to conditions and as a result of a reasonable design including adequate physical separation from the surrounding features, the proposal is consistent with the above objectives.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	6.8m to 9m	No	See comments.
4.4	Floor Space Ratio Site area: 816.9m ²	0.4:1 326.76m ²	0.54:1 445m ²	No	See comments.

4.6 Exceptions to development standards

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	8.5m
Proposed	9m
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	5.88%

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposal is for the construction of a new dwelling on land that slopes from Beatty Street down to the harbour foreshore. The proposal responds effectively to the topography of the site by providing a dwelling that steps down with this site and as such the height of the building is only non-compliant for minor sections of the roof before the dwelling steps down with the slope. This style including step down with topography and reasonable minimisation of height is consistent with dwellings in close vicinity which are also on a similar slope.

- (b) *to control the bulk and scale of buildings,*

Comment:

The proposal is for a dwelling which steps down the slope away from Beatty Street. As such, the presentation of bulk and scale is effectively minimised from the street. In addition, the proposed dwelling has setbacks which are greater at higher levels to ensure bulk upslope does not result in unreasonable amenity or visual impact through appropriate modulation.

- (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),*

Comment:

The topographical nature of the site and proposed stepping down of the dwelling with the slope ensures that views for dwellings opposite the subject site will be reasonably maintained. As a result of the compliant rear setback to the proposed dwelling and the open natured balcony and terrace areas to the rear, views will also be reasonably maintained to the east for adjacent dwellings.

- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The proposal is consistent with the controls for Sunlight Access and Overshadowing under Part 3 of the Manly DCP. As a result, the non-compliances are reasonable in terms of solar access.

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

Comment:

The proposed dwelling responds appropriately to the topographical nature of the site, with the step down design. In addition, the rear setback is compliant to the dwelling to ensure the bulk of the dwelling would not have any unreasonable impact on the foreshore area to the rear, subject to conditions.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of Zone E3 Environmental Management are:

- *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 storm water run-off on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height of bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

Subject to conditions and as a result of a reasonable design including adequate physical separation from the surrounding features, the proposal is consistent with the above objectives.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment:

In this circumstance, providing flexibility to the height of building development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as the non-compliant height proposed would not have any unreasonable impact on amenity and the overall proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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.

(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.*

Comment:

The following justification has been provided by the applicant:

"It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposed height variation is negligible and is limited to a minor and indiscernible component which is confined to an eave overhang. The following diagram demonstrates the limited extent of height variation whilst also demonstrating that such variation is consistent with the height variation of the existing dwelling.*
- The majority of the proposed built form is below the height limit*
- The height of the dwelling as it presents to Beatty Street is of a modest single storey scale and less than what would be contemplated by the 8.5m height limit (i.e 2-3 storeys).*
- The stepped nature of the proposed dwelling up the hillside minimises the overall height, bulk and scale and provides for a recessive built form which sits comfortably in its context.*
- The proposed height is not responsible for any unreasonable amenity impacts to any of its northern, southern or western neighbours on the other side of Beatty Street. In this regard, the proposed height is not responsible for any adverse or unreasonable shadow, visual or acoustic privacy or privacy impacts.*
- The substantial landscape setback of the proposed dwelling from its rear boundary interfaced with the foreshore reserve and harbour ensures that the proposed height has a desirable relationship with the foreshore interface.*

The above factors demonstrate that the LEP height standard is unreasonable and unnecessary in this instance.

The following assessment addresses each of the relevant criteria under Clause 4.6:

1. *Consistency with the objectives of the height standard in the LEP*

Clause 4.3 Height:

1. *The objectives of this clause are as follows:*
 - a. *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Assessment: *The minor height variation is due to the steeply sloping nature of the site and the design suitably responds by stepping down the hillside from west down to east. The built form has been built into the hillside to minimise the height impacts of the proposal.*

The proposed height and roof form of the dwelling is consistent with that existing on the subject site and with neighbouring properties to the north and south who have similar stepped built forms with flat rooves.

It is therefore considered that the proposed height and roof form is consistent with the desired future character of the area.

- b. *to control the bulk and scale of buildings,*

Assessment: *The proposed height variation will not be responsible for any additional bulk and scale impacts beyond that of a compliant building envelope. Bulk and scale impacts have been minimised by stepping down the built form with the hillside and building the dwelling into the hillside through some excavation.*

- 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),

Assessment: It is considered that the proposed height variation of 600mm is not responsible for any loss of views from public or private areas. The proposed dwelling will sit below the Beatty Street footway, and properties on the western side of the street are elevated above. Therefore outlook from properties on the western side of Beatty Street to Reef Bay will be unaffected by the proposed dwelling.

Similarly, the siting of the dwelling against the hillside on the western side of the site ensures that neighbouring properties to the north and south maintain direct and oblique views to Reef Bay.

- d. to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings

Assessment: The proposed height variation is not responsible for any unreasonable shadow impacts to neighbouring properties or the public foreshore area. The accompanying shadow diagrams demonstrate that while some overshadowing is inevitable on an east-west oriented site, the additional shadows generated by the proposed dwelling are minor in nature and do not fall on the southern adjoining neighbour, but are restricted to a small portion of their rear private open space.

The large landscaped setback between the proposed dwelling and the foreshore boundary ensures that it will not impact upon the public enjoyment of the foreshore.

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

Assessment: The subject site is not located in a recreation or environmental protection zone. Nevertheless, the subject site is already developed and the proposed footprint is comparable to that existing on the subject site. It is therefore considered that the proposal will not create any additional impacts on the existing vegetation and topography of the site.

2. Consistency with the objectives of the E3 Environmental Management zone

Objectives of zone:

- 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.

Assessment: It is considered that the proposed height variation does not raise any matters of inconsistency with the E3 Environmental zone objectives.

The proposal is consistent with the type of development that exists on the site and neighbouring sites. The proposal will not intensify the use of the site and will not negatively impact upon the foreshore area.

The replacement dwelling is considered to satisfy the zone objectives by restricting the building footprint to be consistent with the existing dwelling whilst the siting and design of the built form does not dominate the hillside, nor any foreshore area or bushland.

The sensitive siting and articulation of the development which steps down the hillside, preserves the streetscape, visual impact and amenity impacts of the proposed development, in regard to view sharing, privacy and solar access.

Therefore it is considered that the proposed height variation maintains compliance with the objectives of the zone.

3. Consistency with State and Regional planning policies

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979. The proposed height allows for achievement of the building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

4. There are sufficient environmental grounds to permit the variation

Assessment: The proposed height variation is not responsible for any greater environmental impacts than a proposal with a compliant height.

The proposal achieves a compatible and desirable streetscape outcome which is comparable to the existing dwellings along Beatty Street.

The additional height does not generate any unreasonable view, shadow, privacy or visual bulk impacts, noting that the proposed dwelling is sited at the west of the site in a stepped form which minimises visual bulk, shadow and privacy impacts to surrounding properties.

The proposed height variation allows the dwelling to achieve high internal amenity which outperforms the typical amenity criteria.

On this basis, it is considered that there are sufficient environmental grounds to support the proposal.

5. The variation is in the public interest

Assessment: The above assessment demonstrates that the proposed height satisfies the objectives of the standard and the zone and confirms that the proposed height allows for a better planning outcome on the subject site.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

It is also noted that there is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the development proposal at 38 Beatty Street, Balgowlah Heights and is requested to be looked upon favourably by Council."

- (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*

Comment:

A written request has been provided which gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the reasoning as stated above.

- (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.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environment Management zone in the MLEP 2013.

(b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, the development contravenes the development standard by greater than 10% and as such concurrence may not be assumed by a delegate of Council but in this case a local planning panel.

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.4:1 326.76m ²
Proposed	0.54:1 445m ²
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	36.18%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 2013 are:

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

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

Comment:

The proposal is for the construction of a new dwelling on land that slopes from Beatty Street down to the harbour foreshore. At this location on the lower side of Beatty Street, the predominant building style is for dwellings to be stepped down the slope. The proposed dwelling also have this feature and as such will have a presentation of bulk and scale is appropriately minimised from the street. In addition, the proposed dwelling has setbacks which are greater at higher levels to ensure bulk up slope does not result in unreasonable amenity or visual impact through appropriate modulation.

It is noted that the proposal also has a consistent proposed FSR as the following approved neighbouring dwelling at 36 Beatty Street for 0.54:1 DA315/2015.

- (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,*

Comment:

The proposal adequately controls bulk in relation to the site and context of the area by responding appropriately to the topography and providing reasonable setbacks. As a result of this stepping down and the location of the dwelling, majorly below the higher level of Beatty Street, there would be no unreasonable obscurement of any landscape or townscape features.

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

Comment:

The proposal is located on a site that is on the lower side of Beatty Street. The proposal responds to the topography of the site and provides a similar bulk to neighbouring dwelling and as such will provide an appropriate visual presentation, given the context of the area.

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

Comment:

As a result of the location down slope and reasonable setbacks (including larger setbacks at higher levels), environmental impacts will be appropriately minimised.

- (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.*

Comment:

Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of Zone E3 Environmental Management are:

- *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 storm water run-off on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height of bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

Subject to conditions and as a result of a reasonable design including adequate physical separation from the surrounding features, the proposal is consistent with the above objectives.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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.

(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.*

Comment:

The following justification has been provided by the applicant:

*"It is considered that the development standard for FSR on the site is **unreasonable and unnecessary** for the following reasons:*

- As shown in the following 3D building envelope diagram the proposed height, bulk and scale is comparable to the existing dwelling on the subject site.*
- The stepped nature of the built form minimises the visual bulk of the proposal and it provides for a recessive built form which follows the topography of the hillside. The proposed landscaping within the rear and side setback further softens the built form as viewed from the foreshore and harbour as well as adjoining properties either side.*
- The proposed FSR would be indiscernible when viewed from Beatty Street given its discreet siting below the street front and only the garage would be evident from the street front*
- A significant proportion of the proposed FSR will be below the existing ground level and would not be evident from any public or private vantage points. It is considered that the above ground FSR would be compliant with the 0.4:1 standard.*
- The proposed FSR is not responsible for any unreasonable amenity impacts to any of its northern, southern or western neighbours on the other side of Beatty Street. In this regard, the proposed FSR is not responsible for any adverse or unreasonable shadow, visual or acoustic privacy or privacy impacts.*
- The attractive and high quality nature of the proposed dwelling provides for far greater internal amenity whilst also improving the visual presentation when viewed from the sensitive harbour side location.*

The above factors demonstrate that the LEP FSR standard is unreasonable and unnecessary in this circumstance.

The following assessment addresses each of the relevant criteria under Clause 4.6:

1. Consistency with the objectives of the FSR standard in the LEP

Clause 4.4 FSR:

The objectives of this clause are as follows:

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

Assessment: *The proposed bulk and scale of the development is compatible with the character of the locality, noting that the approved FSR for 40 Beatty Street to the north and 36 Beatty Street to the south are consistent with that proposed on the subject site.*

The proposed bulk and scale is not responsible for any unreasonable impacts to neighbouring dwellings including shadow impacts, privacy or view loss impacts.

The stepped nature of the built form responds to the natural topography of the site and minimises bulk and scale impacts of the development. The dwelling is also set down from the Beatty Street footway and any visual bulk will not be visible from the streetscape.

In this regard, it is considered that the proposed bulk and scale is consistent with the existing and desired streetscape character.

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

Assessment: The proposed dwelling has been appropriately sited against the hillside to the west of the site to ensure that any impacts associated with the built form are minimised. Importantly, the proposed built form will remain subservient to the heritage listed trees due to the suitable stepped form of dwelling as well as its substantial setback from the trees with new landscaping in between. The proposed FSR therefore does not raise any inconsistency with this objective.

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

Assessment: The proposed replacement dwelling is suitably recessed and is substantially setback from the rear of the foreshore area. The extensive vertical and horizontal landscaping in between the foreshore and the recessed dwelling is effective in maintaining an appropriate visual relationship when viewed from the foreshore. The stepped nature of the building and recessed siting of the built form ensures that the additional FSR is not responsible for any greater visual impacts than a compliant FSR. It is also reiterated that a substantial proportion of the FSR is set within the hillside and would not be apparent from the public domain whilst also being discreet from neighbouring properties. The proposed height, bulk and scale is also compatible with the scale of surrounding dwellings either side and higher up the hillside to the west.

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

Assessment: The proposed FSR has been designed to minimise environmental impacts as demonstrated by the compliant and reasonable outcomes in regard to view sharing, overshadowing, privacy and visual bulk. The additional FSR would not be perceptible from the streetscape due to the sunken nature of the site from Beatty Street w(single storey presentation) whilst its stepped and recessed form from the public domain (foreshore walkway and Harbour) ensures that the additional FSR has no adverse or unreasonable impacts beyond that of a compliant development.

- 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.

Assessment: The subject site is not located in a business zone.

2. Consistency with the objectives of the E3 Environmental Management zone

Objectives of zone:

- 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.

Assessment: It is considered that the proposed FSR variation does not raise any matters of inconsistency with the E3 Environmental zone objectives.

The proposal is consistent with the type of development that exists on the site and neighbouring sites. The proposal will not intensify the use of the site and will not negatively impact upon the foreshore area.

The replacement dwelling is considered to satisfy the zone objectives by restricting the building footprint to be consistent with the existing dwelling whilst the siting and design of the built form does not dominate the hillside, nor any foreshore area or bushland.

The sensitive siting and articulation of the development which steps down the hillside, preserves the streetscape, visual impact and amenity impacts of the proposed development, in regard to view sharing, privacy and solar access.

Therefore it is considered that the proposed FSR variation maintains compliance with the objectives of the zone.

3. Consistency with State and Regional planning policies

Assessment: The proposed FSR variation ensures the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979. The proposal does not generate any inconsistency with any State or Regional Policy as the proposed dwelling and its associated FSR will have a desirable relationship with the harbour and foreshore areas.

4. There are sufficient environmental grounds to permit the variation

Assessment: The proposed FSR variation is not responsible for any greater environmental impacts than a proposal with a compliant FSR.

The proposal achieves a compatible and desirable streetscape outcome which is comparable to the existing dwellings along Beatty Street.

The additional FSR does not generate any unreasonable view, shadow, privacy or visual bulk impacts, noting that the proposed dwelling is sited at the west of the site in a stepped form which minimises visual bulk, shadow and privacy impacts to surrounding properties.

The proposed FSR variation allows the dwelling to achieve high internal amenity which outperforms the typical amenity criteria.

On this basis, it is considered that there are sufficient environmental grounds to support the proposed variation to the FSR control.

5. The variation is in the public interest

Assessment: The above justification demonstrates that the proposed FSR satisfies the objectives of the standard and the zone and therefore confirms that the proposed FSR is in the public interest.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

It is also noted that there is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the development proposal at 38 Beatty Street, Balgowlah Heights and is requested to be looked upon favourably by Council."

- (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

Comment:

A written request has been provided which gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the reasoning as stated above.

- (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.

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment: Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, the development contravenes the development standard by greater than 10% and as such concurrence may not be assumed by a delegate of Council but in this case a local planning panel.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposal is adjacent to the heritage listed Harbour foreshore (Item I1). As a result of the reasonable setback to the dwelling and reasonable control of bulk, the proposal would have no unreasonable impact on the significance of this item.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.2	Earthworks	Yes	Yes	Subject to conditions.
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.5	Terrestrial Biodiversity	Yes	Yes	Subject to conditions.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposal provides a reasonable bulk, setbacks and has an adequate rear setback to the dwelling, ensuring an appropriate outcome in the Foreshore Scenic Protection Area.
6.12	Essential services	Yes	Yes	Existing and subject to conditions.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓	✓
Heritage – In Vicinity	✓	✓
Landscaping Design	✓	✓
Landscape/Tree Preservation	✓	✓
Sunlight Access and Overshadowing	✓ complies with controls	✓
Privacy and Security	✓	✓
Maintenance of Views	✓	✓

Comment:

3.1 Streetscapes and Townscapes

Streetscape

The proposal is consistent with the objectives for Streetscape under the Manly DCP, 2013 as follows:
Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

The proposal involves a car stacker and entry area, setback 2.64m-4.95m from the front boundary. This is a similar building line to existing and approved building lines in the streetscape. In combination with the frontage being adjacent to the lower side of Beatty Street, this will ensure that the visual impact of this structure at the frontage is appropriately minimised.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

The proposed style of dwelling with levels which steps down with the slope is similar to dwellings on this side of the street in close vicinity. As such, the dwelling would reasonably complement the identified streetscape.

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Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

The presentation of the structure at the front of the site is appropriate and the proposal has sufficient landscaping, subject to conditions

3.4.2 Privacy and Security

The proposal is consistent with the objectives for Privacy and Security under the Manly DCP, 2013 as follows:

- Objective 1) To minimise loss of privacy to adjacent and nearby development by:*
- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
 - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed western elevation has a setback of 1.23-2.75m at the northern setback and 1.07-2.87m at the southern side across the 4 levels. The design of the dwelling includes the higher areas which The proposal will minimise loss of privacy to and from adjacent properties through adequate setbacks to open space areas above ground, the swimming pool and windows. In addition, the location and extent of the windows proposed would ensure that there would be no unreasonable opportunity for overlooking between windows.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

The balance between highlight and full length windows at each elevation is a reasonable compromise in terms of increasing privacy without compromising access to light and air. In addition to this, the design of the open natured outdoor areas with reasonable setbacks, ensure an appropriate compromise.

Objective 3) To encourage awareness of neighbourhood security.

The proposal provides sufficient window locations, entrances and open space above go to allow for awareness of neighbourhood security.

Part 4 - Development Controls

Site Area: 816.9m ²	Permitted/ Required	Proposed	Complies Yes/No
Wall height North side	8m	8.1m	No, see comments.
South side	8m	8.4m	No, see comments.
Number of Storeys	2	5	No, however no more than two storeys at any one point. Also, see comments.
Roof height	2.5m	0.9m	Yes.
Setback Front	6.0m or streetscape	Consistent with prevailing building line.	Yes.
North setback side	2.7m	1.23-2.75m	No.
South setback side	2.8m	1.07-2.87m	No.
Setback Rear	8m	12.55m (dwelling)	Yes.

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Site Area: 816.9m ²	Permitted/ Required	Proposed	Complies Yes/No
Open space - total	Min. 55% of Site Area (449.295m ²)	68.5% (560m ²)	Yes.
Open space - landscaped	Min. 35% of Total Open Space (196m ²)	35.89% (201m ²)	Yes.
Open space - above ground	Max. 25% of Total Open Space (140m ²)	139m ²	Yes.
Number of Endemic Trees	4	>4	Yes.
Private Open Space	18m ²	120m ²	Yes.
Car Parking – Residents	2 spaces	4 spaces	Yes.
Swimming pool height	1m	1.5m	No. However, the reasons for an exception have been met in that the swimming pool has compliant side setbacks and is located at the rear (downslope), so would not detract from amenity or character of neighbourhood.
Swimming pool setbacks pool concourse / deck	1m	1.1m	Yes.
Swimming pool setbacks water's edge	1.5m	2.4m	Yes.
Excavation	Generally 1m Dilapidation or Geotechnical report	Geotechnical report provided.	Yes.

Comment:

LEP Clause 4.3 Height of buildings

The proposal is marginally non-compliant with the controls for wall height and number of storeys. In this case, it is stated under the Manly DCP that the objectives for height of building are particularly applicable:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposal is for the construction of a new dwelling on land that slopes from Beatty Street down to the harbour foreshore. The proposal responds effectively to the topography of the site by providing a dwelling that steps down with this site and as such, the wall heights are only marginally non-compliant toward the centre of the side elevations. This style including step down with topography and reasonable minimisation of large walls is consistent with dwellings in close vicinity which are also on a similar slope.

(b) *to control the bulk and scale of buildings,*

Comment:

The proposal is for a dwelling which steps down the slope away from Beatty Street. As such, the presentation of bulk and scale is effectively minimised from the street. In addition, the proposed dwelling has setbacks which are greater at higher levels to ensure bulk upslope does not result in unreasonable amenity or visual impact through appropriate modulation.

(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),*

Comment:

The topographical nature of the site and proposed stepping down of the dwelling with the slope ensures that views for dwellings opposite the subject site will be reasonably maintained. As a result of the compliant rear setback to the proposed dwelling and the open natured balcony and terrace areas to the rear, views will also be reasonably maintained to the east for adjacent dwellings.

(d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The proposal is consistent with the controls for Sunlight Access and Overshadowing under Part 3 of the Manly DCP. As a result, the non-compliances are reasonable in terms of solar access.

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

Comment:

The proposed dwelling responds appropriately to the topographical nature of the site, with the step down design. In addition, the rear setback is compliant to the dwelling to ensure the bulk of the dwelling would not have any unreasonable impact on the foreshore area to the rear, subject to conditions.

4.1.4 Setbacks (front, side and rear) and Building Separation

The proposal is inconsistent with the numerical controls for setbacks under the Manly, DCP. However, the proposal is consistent with the objectives for setbacks as follows:

Objective 1) 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.

The proposal is for a new dwelling that has varying setbacks at each level of the dwelling. At the top level of the dwelling, the side setbacks of the dwelling are compliant with the numerical control and in combination with the dwelling being downslope from the street, this ensures that the presentation of bulk is sufficient so as to maintain desired spatial proportions in the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*

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- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

As result of the design of the dwelling which includes varied setbacks and in particular, greater setbacks for higher levels, the proposal will provide appropriate amenity for the area.

This modulation will ensure an appropriate outcome for light, sunshine, air and view sharing.

The large rear setback to the dwelling and the location of the dwelling down slope ensures there would be no unreasonable impact on views.

Objective 3) To promote flexibility in the siting of buildings.

Given the general step down with the topography of the site, consistent front setback with prevailing building line and the large rear setback, the proposal has an adequate siting for visual presentation and amenity.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Objective 5) To assist in appropriate bush fire asset protection zones.

The proposal has a swimming pool which could assist with bush fire protection.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓ -meets provisions provided	
Threatened Species and Critical Habitat	✓ meets provisions subject to conditions	
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas:

The proposed development is consistent with the relevant controls of Clauses 2.2, 3.4, 4.2, 4.4 and 4.5 of the Sydney Harbour Foreshores & Waterways Areas Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The proposed development has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development as modified by the conditions of consent is not considered to have any detrimental impact on the natural and built environments and is accordingly recommended for approval.

79C(1) (c) - the suitability of the site for the development,

The proposed development as modified by the conditions of consent is considered to be suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with no submissions received at the time of writing this report.

79C(1) (e) - the public interest.

The proposed development as modified by the conditions of consent is not considered to have an adverse impact on the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
- (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution,
- or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

Comments:

In this case, the proposal does not involve the addition of any dwellings and as a result contributions are not applicable.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. DA2017/1218 for demolition of an existing dwelling and construction of a new dwelling house at 38 Beatty Street, Balgowlah Heights be **approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA2017/1218:

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA04.1- Site Plan	No date. Reserved 1629	b.e architecture
DA04.2- Floor Plan – Level 4	No date. Reserved 1629	b.e architecture
DA04.3- Floor Plan – Level 3	No date. Reserved 1629	b.e architecture
DA04.4- Floor Plan – Level 2	No date. Reserved 1629	b.e architecture
DA04.5- Floor Plan – Level 1	No date. Reserved 1629	b.e architecture
DA05.1- Elevations – Level 1	No date. Reserved 1629	b.e architecture
DA05.2- Elevations – Level 1	No date. Reserved 1629	b.e architecture
DA07.6- Design Response Overlooking	No date. Reserved 1629	b.e architecture
DA08.3- North boundary Retaining – Level 1	No date. Reserved 1629	b.e architecture
DA09.1- Design response- Vegetation	No date. Reserved 1629	b.e architecture
DA09.2- Design response- Street engagement	No date. Reserved 1629	b.e architecture
DA009.3- Design Response- Foreshore Engagement	Rev A	b.e architecture
DA09.4- Swimming Pool Plan	No date. Reserved 1629	b.e architecture
Masterplan (Landscape)	Issue B- 17.01.2018	Sturt Noble Associates
Planting Plan and Schedule	Issue B- 17.01.2018	Sturt Noble Associates

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

ANS01

The approved consent plans must be submitted to a *The Sydney Water Tap in™* online self-service to determine whether the development will affect Sydney Water's sewer and water mains, storm water drains and/or easements, and if further requirements need to be met. Please refer to the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>>.

The Certifying Authority must ensure that a Sydney Water has appropriately checked the plans prior to the issue of any Construction Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

ANS02

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for native fauna is required. Clearing may only proceed if this survey concludes that no native fauna are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether native fauna are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter).

Reason: To prevent direct impacts to native fauna in accordance with objectives of Clause 6.5 of the Manly LEP 2013.

ANS03

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity associated with the development.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

1A (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

2A (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

3 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

4 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m²)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

5 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

6 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

7 (2WM02)

A Waste Management Plan is to be submitted with the application prior to a Construction Certificate being issued in accordance with the Manly Development Control Plan 2013.

The plan should detail the type and estimate the amount of demolition and construction waste and nominate how these materials will be sorted and dealt with. Weight dockets and receipts must be kept as evidence of approved methods of disposal and recycling. All demolition and excess construction materials are to be recycled where ever practicable. It should include consideration of the facilities required for the ongoing operation of the premises' recycling and waste management services after occupation. A template is available from the Manly Council website.

Reason: To plan for waste minimisation, recycling of building waste and on-going waste management.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

8 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

9 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

10 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.

- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

12 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

13 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.







ITEM 3.7 **DA2018/0092 - 4 DAYDREAM STREET, WARRIEWOOD -
CHANGE OF USE TO A WAREHOUSE AND CONSTRUCTION OF
A MEZZANINE LEVEL**

REPORTING OFFICER Kevin Short

TRIM FILE REF 2018/199455

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/0092 for Change of use to a warehouse and construction of a mezzanine level at Lot 14 SP 80638, 4 Daydream Street, Warriewood subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0092
Responsible Officer:	Kevin Short
Land to be developed (Address):	LOT 14 S/P 80638, 1112 / 4 Daydream Street WARRIEWOOD NSW 2102
Proposed Development:	Change of use to a warehouse and construction of a mezzanine level
Zoning:	B7 Business Park
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Benjamin Roy Charles Hall
Applicant:	Turnbull Planning International Pty Ltd
Application lodged:	24/01/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	29/01/2018 to 14/02/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 14,911.61

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone B7 Business Park

Pittwater Local Environmental Plan 2014 - 4.5 Calculation of floor space ratio and site area

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - 2014 - B6.3 Off-Street Vehicle Parking Requirements

SITE DESCRIPTION

Property Description:	LOT 14 S/P 80638 , 1112 / 4 Daydream Street WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The site is rectangular in shape, has an area of 11 649m² with primary and secondary frontages to Daydream Street and Jubilee Avenue respectively. Known as the 'Quattro' development, the site contains four (4) four (4) storey buildings comprising three (3) mixed use buildings and one (1) private hospital. Two (2) levels of basement carparking connect the three (3) mixed use buildings whilst the hospital has its own designated two (2) level basement carpark.</p> <p>The subject premise is located within the 'Quattro' development <i>Building 1</i> which is located at the southern end of the property.</p> <p>Access to the site is provided from Daydream Street. The site is zoned B7 Business Park; located within the Warriewood Urban Land Release Locality; affected by flood; and bushfire prone.</p> <p>The site is located within the Warriewood Valley Stage One Release Area. The Stage One Release area comprises a mix of light industrial, office, warehouse, and commercial land uses in buildings of various architectural styles and forms. Childcare centres and indoor recreation facilities are also prevalent within the catchment of the site. Pittwater Uniting Church is situated to the west and upslope of the site, and mixed use development at No. 2 Daydream Street adjoins the site to the north. An aerial view of the site is provided in Figure 1.</p>

Map:



SITE HISTORY

Development Consent N0341/15 for the construction, fit-out and use of a new private hospital, accommodating a maximum of 99 beds was granted 2 December 2015.

Development Consent N0416/04 for a commercial development consisting four (4) buildings with a total of 10045m² of office space, 1604m² of industrial floor space and carparking for 347 vehicles was granted 6 December 2004.

Note: Three (3) buildings, being Building 1, 2 and 4, were constructed as part of this approved development. Building No.4 was partially constructed. In place of this building, the private hospital approved under Development Consent N0341/15 was constructed.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for a change of use from a storage premises to a warehouse and construction of a mezzanine level (GFA 36m²) for ancillary office use.

No other works are proposed inside or outside of the premises.

No hours of operation are proposed or loading and unloading details. Given the proposed warehouse use and substantial spatial separation to residential development, no hours operation will be imposed on the site or loading and unloading timing restrictions.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 79C 'Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Compliance (Building Control)	No concerns are raised to the proposed development.
Environmental Compliance (Building Control)	Building Control has no objections to the lodgement of this application for change of use
External Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for storage purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the warehouse land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11.0m	no change: within existing approved ground floor level warehouse	N/A	Yes
Floor Space Ratio	1:1	proposed: 1.137:1 existing: 1.134:1	13.7% (1601.35m ²) 13.4% (1565.35m ²)	No No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
7.3 Flood planning	Yes

Detailed Assessment

Zone B7 Business Park

The warehouse use is a permitted land use within the B7 Business Park zone. An Office land use is a prohibited land use within the B7 Business Park zone.

The dominant purpose of a development is the reason for which the development is undertaken or the end to which the development serves. Consistent with Planning Circular "*How to characterise development*" PS 13-001 dated 21 February 2013, the dominant purpose of this development is for a "warehouse". As such, the "warehouse" is deemed the dominant land use.

On this basis, the "office" component is subordinate or subservient to the dominant purpose of the development (i.e. warehouse) and therefore it is an ancillary use.

Having regard to the above, whilst the office land use is a prohibited land use within the zone, in this application it is found to be a lawful ancillary land use to the dominant warehouse land use.

4.5 Calculation of floor space ratio and site area

Proposed Floor Space Ratio (FSR)

FSR is calculated at 1.137:1. The variation to this development standard is provided under the PLEP 2014 cl. 4.6 Exceptions to development standards section of the report.

Calculation of proposed FSR

Site Area: 11649m²

Gross Floor Area (GFA) of mezzanine level: 36m² + 13214.35m²

13250.35/11649 = 1.137:1 (13.7% variation or 1601.35m²)

Existing FSR (as approved under Development Consent N0341/15)

Site Area: 11649m²

Gross Floor Area (GFA): 13214.35m²

13214.35/11649 = 1.134:1 (13.4% variation or 1565.35m²)

4.6 Exceptions to development standards

The following assessment of the variation to Clause - 4.4 Floor space Ratio development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	1:1
Proposed:	1.137:1
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	13.7% (1601.35m ²)

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the PLEP 2014. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Floor space ratio limitation pursuant to Clause 4.4 of the PLEP 2014 is a development standard.

What are the underlying objectives of the development standard?

a) to ensure that buildings, by virtue of their bulk and scale, are consistent with the desired character of the locality.

Comment: The proposal relates to the construction of a mezzanine level within an existing warehouse which is located within Building 1 of the 'Quattro' development. The 'Quattro' development comprises four (4) four (4) storey buildings comprising three (3) mixed use buildings and one (1) private hospital. On this basis, the proposal will not change the existing bulk and scale of the approved premise.

b) to minimise adverse environmental effects on the use and enjoyment of adjoining properties and the public domain.

Comment: The proposal will not impact on the current use and enjoyment of adjoining properties and the public domain

c) to minimise any overshadowing and loss of privacy to neighbouring properties and to reduce the visual impact of any development.

Comment: The proposal will not impact on the existing level of overshadowing, privacy and visual impact.

d) to maximise solar access and amenity for public places.

Comment: The proposal will not impact on the existing level of solar access and amenity for public places.

e) to minimise the adverse impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The proposal will not impact on the natural environment, heritage conservation areas and heritage items.

f) to manage the visual impact of development when viewed from public places, including waterways,

Comment: The proposal cannot be viewed from public places.

g) to allow for the reasonable sharing of views.

Comment: The proposal will not impact on available views.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the B7 Business Park zone.

- To provide a range of office and light industrial uses.

Comment: The proposal is for ancillary office space to service a proposed warehouse premise.

- To encourage employment opportunities.

Comment: Employment opportunities are maintained by the proposal.

- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.

Comment: The proposed warehouse premise will provide a land use which can be utilised by local workers.

- To provide healthy, attractive, functional and safe business areas.

Comment: The proposal will not detract from the healthy, attractive, functional and safe business area of the locality.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the PLEP 2014?

(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.

Comment: Existing FSR is 1.134:1 and therefore non-compliant with the minimum 1:1 FSR development standard. Whilst the proposal will increase the extent of the existing non-compliance to 1.137:1, a certain degree of flexibility is required in applying the development standard as the additional mezzanine ancillary office level (GFA 36m²) will assist to manage the existing warehouse land use and assist to improve the business.

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

Comment: As detailed above, a better planning outcome, being an improved business, is achieved by allowing flexibility in this particular case.

(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.

(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.

Comment: In accordance with the requirements described above, the Applicant has provided a satisfactory written request to vary the development standard. The justification provided by the Applicant for the Clause 4.6 Variation is concurred with.

(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.

Comment: For reasons detailed above, the proposal is considered to be in the public interest as it is consistent with the Objectives of the B7 Business Park zone in the PLEP 2014. In this context, the current proposal is an acceptable planning outcome.

Also, the above assessment has found that the proposal satisfies the objectives of the development standard and that the environmental planning grounds for a departure from the development standard are sufficient and considered to be consistent with recent Land and Environment Court case decisions, including *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 9, *Moskovich v Waverley Council* [2016] NSWLEC 1015, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 and *Wehbe v Pittwater Council* [2007] NSWLEC 827 42.

(b) the concurrence of the Director-General has been obtained

Comment:

As directed by the NSW Department of Planning, concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor space ratio Development Standard is assumed.

Pittwater 21 Development Control Plan - 2014

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C3.10 Waste and Recycling Facilities	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The strata plan submitted with the application shows that the subject premises has one (1) allocated car parking space.

The proposal is for a change of use from a storage premise to warehouse premise and the provision of ancillary office space to support the business. As such, additional on-site and street parking is not expected to be generated by the proposal.

Also, public bus stops are located within Ponderosa Parade (near Apollo Street) which is located approximately 260m from the site. These bus stops are regularly serviced by the NSW Transport, being Route 182 - Narrabeen to Mona Vale via Elanora Heights.

Based on the above, the proposal provides adequate parking which will meet the demands generated by the development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Pittwater Section 94 Development Contributions Plan

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant Development Consent to DA2018/0092 for Change of use to a warehouse and construction of a mezzanine level on land at LOT 14 S/P 80638, 1112 / 4 Daydream Street, WARRIEWOOD, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Sheet 1 of 1	January 2018	Turnbull Planning International

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment Statement	15 January 2018	Building Code & Bushfire Hazard Solutions

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. **Approved Land Use**

Nothing in this consent shall authorise the use of the premises as detailed on the approved plans for any land use of the site beyond the definition of a **warehouse or distribution centre**.

A warehouse or distribution is defined as:

"warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made." (development is defined by the Pittwater Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out

on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged

during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as

a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)



AERIAL LOCATION MAP



THIS PLAN TO BE READ IN
CONJUNCTION WITH

PA2018-0092

PHOTOGRAPH OF 1112/4 DAYDREAM STREET

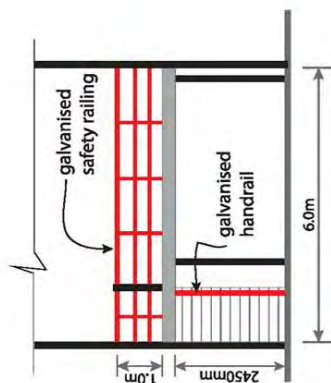
NORTHERN BEACHES COUNCIL



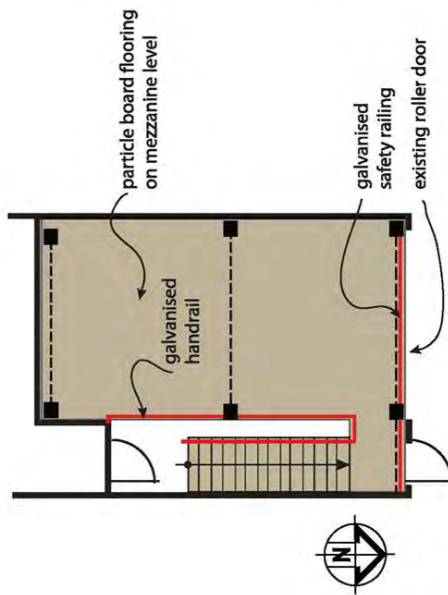
PHOTOGRAPH OF 1112/4 DAYDREAM STREET

NOTE:

This drawing is to be read in conjunction with
Raised Storage Platform Plan _Dec 17_
henry&hynes /Adex Group / Cater Cool Pty Ltd
This mezzanine level is pre-fabricated & free standing
Refer www.adexgroup.com.au



ELEVATION SHOWING PROPOSED MEZZANINE FLOOR



PLAN SHOWING PROPOSED MEZZANINE FLOOR

