

**STATEMENT OF ENVIRONMENTAL EFFECTS FOR  
PROPOSED ALTERATIONS  
TO AN EXISTING RESIDENTIAL FLAT BUILDING  
LOCATED AT  
119-120 NORTH STEYNE, MANLY  
FOR  
THE OWNERS CORPORATION (SP 74073)**



**Prepared  
September 2019**

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## 1.0 Introduction

This Statement of Environmental Effects accompanies details prepared by Quattro Architecture, Project No 19-0525, Drawings No DA-A-050, DA-A-051, DA-A-100, DA-A 101, DA-A-102 , DA-A-200, DA-A-260 & DA-A-400, dated 28 June 2019, on behalf of the Owners Corporation (SP 74073), to detail the proposed replacement of an existing roof level awning at **119-120 North Steyne, Manly (La Corniche Apartments)** .

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

- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *Manly Local Environmental Plan 2013*
- *Manly Development Control Plan 2013 Amendment 11*

## 2.0 Property Description

The subject allotment is described as **119-120 North Steyne, Manly**, being SP 74073 and is zoned R3 Medium Density Residential under the Manly Local Environmental Plan 2013.

The land is noted as being within a Foreshore Scenic Protection Zone and the SEPP Coastal Management Zone. These issues are discussed further within this submission .

The building is not listed as a heritage item within Schedule 5 of the Manly Local Environmental Plan 2013 and is not noted as being within a Conservation Area. A heritage item adjoins to the south of the site and will be discussed further within this submission.

The property is not noted as being affected by potential bushfire attack.

## 3.0 Site Description

The site is located on the south-western corner of the intersection of North Steyne & Pacific Street, opposite the beach front reserve. The site also has a rear, western frontage to Pine Lane.

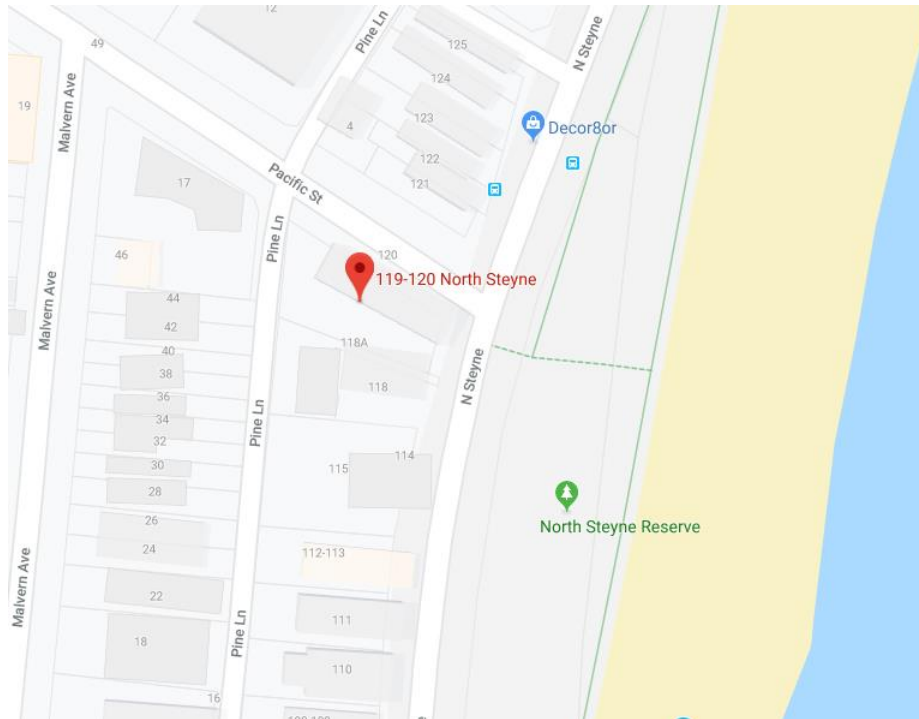
The irregular shaped allotment has a primary frontage of 49.985m to Pacific Street, 15.205m to North Steyne & 26.45m to Pine Lane. The southern boundary measures 43.46m and the total site area is 916.7m<sup>2</sup>.

The existing six level residential flat building is located over two levels of basement garages, with pedestrian access Pacific Street and vehicular access from Pine Lane.

A roof level decorative awning feature on the eastern elevation is dilapidated and will be replaced with a new awning, which is provided as an extension to the existing roof form.

The details of the site are included on the survey plan prepared by Detailed Surveys, Reference

No 033/19 dated 19 June 2019, which accompanies the DA submission.



**Fig 1: Location sketch**  
(Source: Google Maps)



**Fig 2: View of subject site, looking west from North Steyne**





**Fig 3: View of subject site, looking south- west from North Steyne**



**Fig 4: View of adjacent development to the south (including adjacent heritage item at No 118 North Steyne), looking south- west from North Steyne**

#### 4.0 Surrounding Environment

The area surrounding the site is predominantly represented by a mix of low, medium and higher density residential development comprising multi-storey buildings.

Development in the vicinity has been designed with living areas and associated open space that are oriented to take advantage of the significant views towards to Manly & North Steyne Beach and further to the north towards Queenscliff Beach.



**Fig 5: Aerial view of subject site**  
(Source: Google Maps)

## **5.0 Proposed Development**

As detailed within the accompanying plans, the proposal seeks consent for the removal of a dilapidated roof level decorative awning feature on the eastern elevation and its replacement with a new awning, which is provided as an extension to the existing roof form.

All works will be carried out under the direction and supervision of the Consulting Structural Engineer to protect the stability of the subject and adjoining properties and public spaces.

The proposed materials schedule and external finishes and colours have been detailed in the DA submission.

The site's existing landscaped area, open space and floor area of the building will be unchanged.

## **6.0 Zoning and Development Controls**

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

Whilst the cost of the construction works exceeds \$50,000 (\$133,267), given the nature of the works being an awning feature at the roof level, there are no works which alter the BASIX commitments and therefore no further consideration is required at present.

### **6.2 State Environmental Planning Policy No. 55 – Remediation of Land**

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

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

### **6.3 State Environmental Planning Policy (Coastal Management) 2018**

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

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

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

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

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

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

- (a) to protect and enhance natural coastal processes and coastal environmental values including natural character, scenic value, biological diversity and ecosystem integrity and resilience, and*
- (b) to support the social and cultural values of the coastal zone and maintain public access, amenity, use and safety, and*
- (c) to acknowledge Aboriginal peoples' spiritual, social, customary and economic use of the coastal zone, and*
- (d) to recognise the coastal zone as a vital economic zone and to support sustainable coastal economies, and*
- (e) to facilitate ecologically sustainable development in the coastal zone and promote*



- sustainable land use planning decision-making, and*
- (f) to mitigate current and future risks from coastal hazards, taking into account the effects of climate change, and*
  - (g) to recognise that the local and regional scale effects of coastal processes, and the inherently ambulatory and dynamic nature of the shoreline, may result in the loss of coastal land to the sea (including estuaries and other arms of the sea), and to manage coastal use and development accordingly, and*
  - (h) to promote integrated and co-ordinated coastal planning, management and reporting, and*
  - (i) to encourage and promote plans and strategies to improve the resilience of coastal assets to the impacts of an uncertain climate future including impacts of extreme storm events, and*
  - (j) to ensure co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities, and*
  - (k) to support public participation in coastal management and planning and greater public awareness, education and understanding of coastal processes and management actions, and*
  - (l) to facilitate the identification of land in the coastal zone for acquisition by public or local authorities in order to promote the protection, enhancement, maintenance and restoration of the environment of the coastal zone, and*
  - (m) to support the objects of the Marine Estate Management Act 2016.*

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

The matters for consideration under Division 5 of SEPP (Coastal Management) 2018 are:

The relevant provisions of this clause are addressed as follows:

### ***Division 3 Coastal environment area***

#### ***13 Development on land within the coastal environment area***

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) coastal environmental values and natural coastal processes,*
  - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

- (f) Aboriginal cultural heritage, practices and places,*
  - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

**Comment:**

The proposal provides for the replacement of an existing roof level awning with a new awning, to be provided as an extension to the existing roof form. The removal of the existing decorative feature will see a slight reduction in the overall bulk of the eastern elevation of the building.

The proposed works will be carried out in accordance with the recommendations of the consulting Structural Engineer, which will ensure that appropriate structural integrity for the site will be maintained.

**Division 4 Coastal use area**

**14 Development on land within the coastal use area**

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

*meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

**Comment**

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

Shadow diagrams have been prepared which demonstrate that the proposal will not result in any overshadowing to the foreshore area.

The proposed new works will see a slight reduction in the bulk of the development and will not result in any loss of views to the foreshore area. The proposal will protect the visual amenity of the locality.

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

**Division 5 General**

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

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

**Comment**

The proposal provides for minor alterations to the existing residential flat building, with no further disturbance to the site's ground conditions. The proposed new works are not considered to increase the risk of coastal hazards for the subject property or adjoining land.

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

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

**Comment:** No coastal management programs have been identified.

**17 Other development controls not affected**

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

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

**Comment:** Noted

**18 Hierarchy of development controls if overlapping**

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

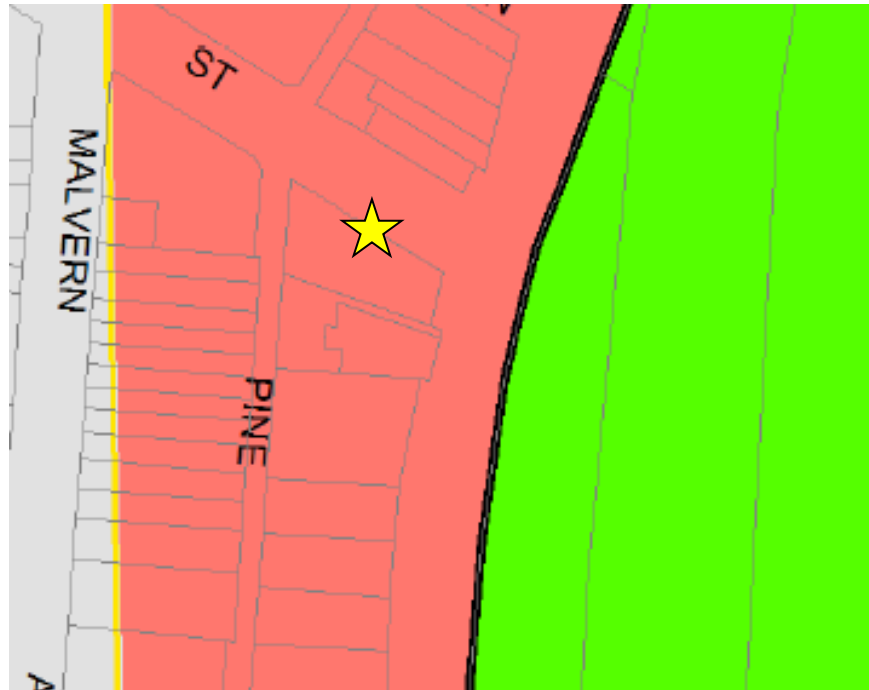
- (a) the coastal wetlands and littoral rainforests area,*
- (b) the coastal vulnerability area,*
- (c) the coastal environment area,*
- (d) the coastal use area.*

**Comment**

Noted

#### 6.4 Manly Local Environmental Plan 2013

The land is zoned R3 Medium Density Residential under the provisions of the MLEP 2013.



**Fig 6: Extract of Manly Local Environmental Plan 2013**

The development of and use of the land for residential purposes is consistent with the R1 zone objectives, which are noted as:

- *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.*

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

- The proposal will be consistent with and complement the mix of existing low, medium and higher density housing within the locality.
- The proposed minor alterations will ensure the development continues to respect the scale and form of other new development in the vicinity and therefore complements the locality. The proposal provides for the replacement of an existing roof level awning, with a new awning which will have a reduced scale and will result in a minor decrease in the overall scale of the roof level to the eastern elevation of the building.



- The proposal does not have any adverse impact on long distance views for the surrounding properties.
- The site is utilised as housing and will continue to maintain the residential use.
- The proposal will maintain an appropriate level of amenity to the adjoining properties.
- The proposal does not unreasonably obstruct any significant views from private property or the public domain.

**Clause 4.3** provides controls relating to the height of buildings.

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

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

The building height limit for development in this portion of Manly is 13m. The proposal will provide for the replacement of an existing roof level decorative awning feature, with a new awning to be provided as an extension of the existing roof level, with no increase in overall height.

The roof and proposed awning is up to 14.6m above ground level, notwithstanding the height is not to be increased. A submission under Clause 4.6 of the Manly LEP 2013 has been prepared to support the proposed works and is included as an Appendix to this Statement.

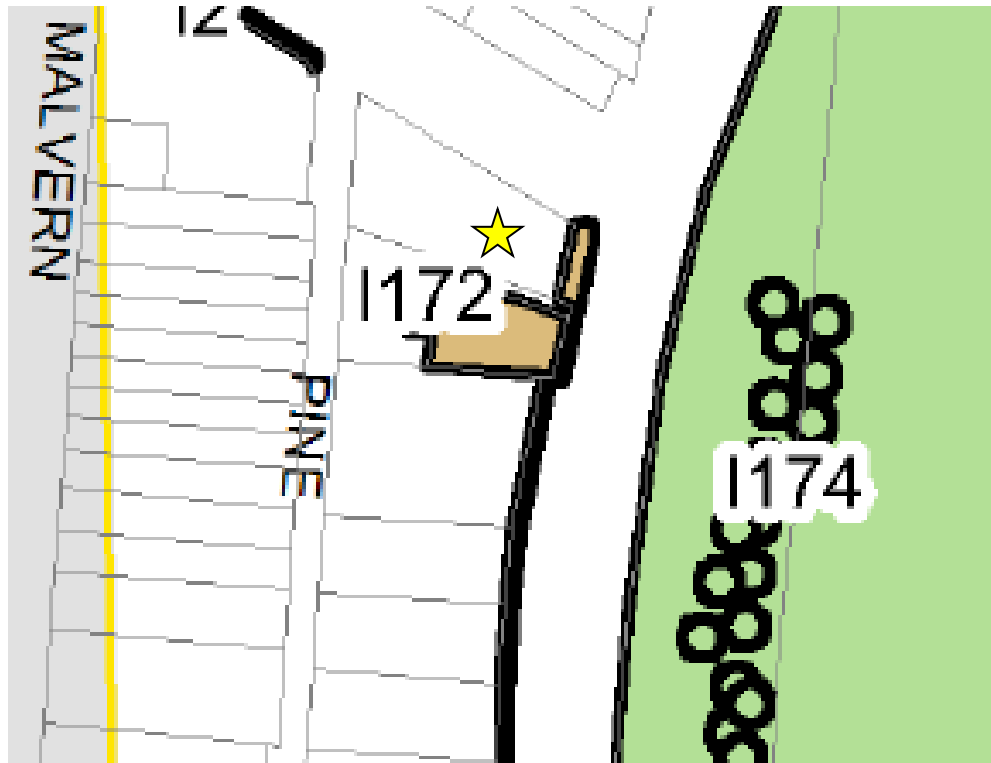
**Clause 4.4** provides a maximum floor space ratio control of 1.5:1 for development in this locality. The existing floor area of the building will be unchanged.

**Clause 5.9** relates to the preservation of trees or vegetation. The proposal will not involve any disturbance to any existing vegetation.

**Clause 5.10** relates to heritage conservation. The site does not contain any heritage items, nor is it located in a Conservation Area. However, the site is adjacent the heritage listed dwelling at No 118 North Steyne (Item 117).

The proposed works are located at the roof level of the existing building and given the height above road level, will not have any direct physical or visual impact on the adjacent heritage item.

The proposed development is therefore not considered to detract from the significance of the nearby heritage item and will present an appropriate scale and form when viewed from North Steyne & Pacific Street.



**Fig 7: Extract of Manly Local Environmental Plan 2013 Heritage Map**

**Clause 6.2** relates to earthworks. The proposal will not involve any further excavation of the site to accommodate the proposed works.

**Clause 6.9** relates to development within the Foreshore Scenic Protection Area and notes within (3):

3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:*

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

In this regard, it is considered that the proposal is suitable in the Foreshore Scenic Protection area, as the works will replace an existing structure in the current location and to the existing levels.

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

## **6.5 Manly Development Control Plan 2013 – Amendment 11**

Council's DCP Development Control Plan 2013 – Amendment 11 provides the primary control for development within the area.

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

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

### **Clause 3.1.1 – Streetscape (Residential Areas)**

The intended outcomes are noted as:

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

#### *Setback Principles in Low Density Areas*

- b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.*

As detailed within the accompanying plans, the proposal seeks approval for the demolition and replacement of an existing roof level awning to the eastern elevation of the building. The works will see a replacement of the existing awning in a slightly reduced size and to the current roof level and as a result, there will not be any significant change to the streetscape presentation of the site.

### Clause 3.3 Landscaping

The proposed new works will retain the existing landscaped area.

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

The objectives of the clause are noted as (over):

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

The modest nature of the works will ensure that the existing amenity and outlook for the adjoining premises will be maintained.

### Clause 3.7 Stormwater Management

The existing stormwater provisions will be unchanged, with collected roofwater directed to the street gutter.

## Part 4 – Residential Development Controls

**Site Area 916.7m<sup>2</sup> – Density Sub Zone D1 (1 Unit /50m<sup>2</sup> per lot)**

### Compliance Table

Control	Required	Proposed	Compliance
<b>Clause 4.1.1</b> Residential Density & Subdivision	Density Area D1 – 1 unit per 50m <sup>2</sup>	Site area is 916.7m <sup>2</sup>	Yes – existing site and dimensions are unchanged, with no increase in unit numbers
<b>Clause 4.1.2</b> Height of Buildings	Maximum height – 13m	Works will replace the existing structures and to the existing heights and location (14.6m see Clause 4.6 Submission)	Yes – See Clause 4.6 Submission

<b>Clause 4.1.13</b> Floor Space Ratio (SR)	1.5:1	Unchanged – no additional floor area proposed	Yes
<b>Clause 4.1.4</b> Setbacks (front, side and rear)  Side Boundary setback – 1/3 of wall height  Rear setback – N/A – corner site	Relate to neighbouring sites or 6m	The proposal seeks approval for the demolition and replacement of a roof level decorative awning feature, with no reduction in side or street setbacks. The new structure will replace the existing awning in the same location.  Existing rear setback unchanged.	Yes – on merit
<b>Clause 4.1.5</b> Open space and Landscaping	Area OS 1 Min 45%/25%	The proposal will maintain the existing open space and landscaped area .	Yes
<b>Clause 5.4.1</b> Foreshore Scenic Protection Area		In this regard, it is considered that the proposal is suitable in the Foreshore Scenic Protection area, as the works will respect the height, scale and form of the surrounding residential development and the existing development on the site.	Yes



<b>Clause 5.4.2</b> Threatened Species and Critical Habitat			N/A
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**7.0 Matter for Consideration under the Under Section 4.15 of The Environmental Planning and Assessment Act, 1979**

**7.1 The provisions of any environmental planning instrument**

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

The site is not within the Foreshores and Waterways Boundary of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

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

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

It is not considered that there are any draft environmental planning instruments applying to the site.

**7.3 Any development control plan**

The development has been designed to comply with the requirements of Manly Development Control Plan 2013 – Amendment 11.

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

No matters of relevance are raised about the proposed development.

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

No matters of relevance are raised about the proposed development.

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

It is considered that the proposal, which seeks approval for the demolition and replacement of a roof level decorative awning feature which will not have any significant impact on the natural and built environment.

All works will be carried out under the direction and supervision of the Consulting Structural Engineer to protect the stability of the adjoining property.

The proposal is considered to be well designed having regard to the relevant provisions of the Council's LEP and Council's Codes and Policies.

#### **7.7 The suitability of the site for the development**

The subject land is currently zoned R1 General Residential under the Manly Local Environmental Plan 2013 and is considered suitable for the proposed development.

The subject site does not exhibit any significant constraint to the construction of the proposed development.

#### **7.8 Submissions made in accordance with this Act or the regulations**

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

#### **7.9 The public Interest**

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

#### **8.0 Conclusion**

The principal objective of this development is to support the demolition and replacement of a roof level decorative awning feature to the eastern elevation of the building. All works will be carried out under the direction and supervision of the Consulting Structural Engineer.

By maintaining our neighbour's amenity and by complementing the scale and form of other development in the immediate locality, the stated objectives have been satisfied.

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

#### **VAUGHAN MILLIGAN**

Town Planner

Grad. Dip. Urban & Regional Planning (UNE)

Appendix: Clause 4.6 Submission

**APPENDIX 1**  
**CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT**

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

**119-120 NORTH STEYNE, MANLY**

**PROPOSED REPLACEMENT OF AN EXISTING DECORATIVE ROOF FEATURE/AWNING WITH A  
NEW ROOF AWNING**

**For:** Proposed replacement of an existing decorative roof feature/awning with a new roof awning  
**At:** 119-120 North Steyne, Manly  
**Owner:** The Owners Corporation – SP 74073  
**Applicant:** The Owners Corporation – SP 74073  
C/- Vaughan Milligan Development Consulting

**1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

**2.0 Background**

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

The maximum building height for this locality is 13m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed works to replace an existing decorative roof feature with a new awning will maintain the existing maximum building height of RL 20.6, which is up to 14.6m above ground level. There will not be any increase in the maximum building height.

The proposed work will exceed the maximum roof height by 1.6m or 12.3% and therefore does not comply with this control.

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



### **3.0 Purpose of Clause 4.6**

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

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

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

### **4.0 Objectives of Clause 4.6**

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the replacement of a roof feature/awning with a new awning, which will be provided as an extension to an existing roof form and which is consistent with the stated Objectives of the R3 Medium Density Residential Zone, noted as:

- 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.*

The proposal will provide for the replacement of an existing roof feature/awning with a new awning to provide for increased amenity for the site's occupants.

The new works will see a slight reduction in the overall bulk and scale and which is in keeping with the extent of surrounding development. The works will maintain a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

The maximum ridge level will stand at RL 20.6m, which matches the existing maximum height.

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

The proposed works at the roof level are modest and have been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

The development will not see any unreasonable impacts on view sharing.

## **5.0 Onus on Applicant**

Clause 4.6(3) provides that:

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

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

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

## **6.0 Justification of Proposed Variation**

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

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

### **Precondition 1 - Consistency with zone objectives**

The site is located in the R3 Medium Density Residential Zone. The objectives of the R3 zone are noted as:

- *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.*

### **Comments**

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (1.6m), the proposed works which see the replacement of an existing decorative awning with a new awning which will be consistent with the individual Objectives of the R3 Medium Density zone for the following reasons:

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

The R3 Medium Density Residential Zone contemplates medium density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed minor changes to the existing residential flat building which will provide for an appropriate level of amenity for the occupants.

The building and the new awning alterations to the roof level will respect the predominant height and scale of the surrounding dwellings.

The development will see the existing maximum height maintained, with the curved roof and contemporary building form and the darker external finishes considered to suitably reduce the visual bulk of the dwelling.

The compatible form and scale of the building will meet the housing needs of the community within a residential flat building which is a permissible use in this medium density residential zone.

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

The minor alterations to the building façade will not alter the existing medium density housing type within the site.

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the proposal.

- ***To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.***

The development does not suggest a revitalisation of the building, with only minor changes proposed. The works are not detracting from the development, which at this stage of its building life does not require a re-development.

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

The proposal does not alter the tourism opportunities in the area.

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

## **Precondition 2 - Consistency with the objectives of the standard**

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

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
  - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
  - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
  - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

## Comments

Despite the minor variation to the maximum building height, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

***(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,***

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The surrounding area is predominantly characterised by multi storey residential flat buildings and other medium density development, often located over basement garages and service rooms.

The proposal seeks to provide or an extension of the existing curved roof form to replace a dilapidated decorative roof feature. The existing overall height of the dwelling will be unchanged.

The proposed external colour and materials palette utilises darker finishes to the upper floor level and is intended to ensure that the building's visual height and scale is further minimised.

***(b) to control the bulk and scale of buildings,***

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

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the proposed extension to the low pitch curved roof form will suitably distribute the bulk of the new floor area.

***(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),***

Due to the works being positioned on the eastern side of the upper floor level, the properties to the west of the site enjoys views towards the beach. Views past the site are generally along the side setback areas.



The proposal will maintain the increasing setbacks to the upper floor level which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

***(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,***

As the proposal will see the replacement of an existing roof awning feature, the shadow analysis prepared by Quattro Architecture provides a shadow analysis to confirm that the change in overshadowing to the southern neighbouring properties is negligible.

The increasing setbacks to the proposed upper floor and low pitch skillion roof form will assist in minimising the effects of overshadowing and will appropriately maintain the neighbour's amenity.

***(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.***

The site is not within a recreation or environmental protection zone and is removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in this portion of Manly and will reflect the existing medium density uses in the vicinity.

Despite the variation to the building height control which occurs as a result of the height and form of the current building, the proposal is generally consistent with the height and scale of the surrounding newer development in the locality.

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

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

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for minor alterations to the existing building, which will improve the amenity of the occupants, without increasing the overall height of the building.

Council's controls in Clause 4.3 provide a maximum building height of 13m. As a result of the existing built form, with the proposal to extend the existing roof form to provide for a new awning, a portion of the roof will be up to 14.6m above ground level.

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

- The development will maintain a compatible scale relationship with the existing medium density development in the area. Development within this area of Manly has a wide range of architectural styles and given the variety in the scale of this development, the proposal will be consistent with surrounding development and will not adversely affect the streetscape.
- The proposed modest additions to the residential flat building will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

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 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:** Whilst it is not suggested that Council has abandoned its control, variations to the maximum building height control have been granted in the immediate vicinity, where Council has considered it appropriate to do so for development that meets the objectives of the zone. In this instance it is considered that the proposed development appropriately addresses the zone objectives and is worthy of the support of Council.

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

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

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

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

Council's controls in Clause 4.3 provide a maximum building height of 13m for the subject development.

The proposed new awning will provide a height of 14.6m or a 1.6m/12.3% variation to the control.

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 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, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, 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 external form of the proposed new awning will see an extension to the existing roof form and results in a building which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of this portion of Manly, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the 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.

## **7.0 Conclusion**

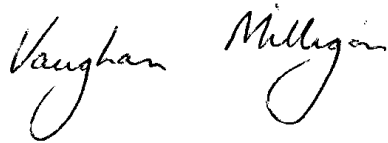
This development proposes a departure from the maximum building height control, with the proposed new awning to provide a maximum building height of 14.6m, which reflects the height of the existing roof.

This variation occurs as a result of the height and form of the current building.

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

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

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

A handwritten signature in black ink, reading "Vaughan Milligan". The signature is written in a cursive, flowing style.

**VAUGHAN MILLIGAN**

*Town Planner*