

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1465
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot B DP 442575, 10 Cecil Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Loretta Maree Reilly
Applicant:	Loretta Maree Reilly

Application lodged:	04/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/09/2018 to 26/09/2018
Advertised:	Not Advertised
Submissions Received:	11
Recommendation:	Refusal

Estimated Cost of Works:	\$ 320,000.00
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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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Development Control Plan - 3.3.1 Landscaping Design

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot B DP 442575 , 10 Cecil Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Cecil Street.</p> <p>The site is regular in shape with a frontage of 6.04m along Cecil Street and a depth of 35.05m. The site has a surveyed area of 213.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling.</p> <p>The site slopes 1.4m from front (south) to rear (north).</p> <p>The site contains small trees and vegetation, and one significant tree located in the rear yard.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by generally by detached and semi-detached dwellings and residential flat buildings.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes alterations and additions to the existing ground floor and a first floor addition resulting in:

Ground floor:

- Kitchen/dining & living room
- Family room
- Bed 1
- Bathroom
- New rear deck

First floor:

- Master bed with balcony
- Bed 2
- Bed 3
- Bathroom

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979,

are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (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 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> <p><u>Clause 143A</u> 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.</p>

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly LEP and DCP and will result in a development which will be inconsistent with the aims and objectives of the Manly LEP and DCP and therefore contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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 process council is in receipt of 11 submission/s from:

Name:	Address:
Ms Monica Ford	29 Augusta Road FAIRLIGHT NSW 2094
Mr Gordon Eastwood	27 Augusta Road FAIRLIGHT NSW 2094
Ms Rebecca Jane Hanel	25 Augusta Road FAIRLIGHT NSW 2094
Mr Bruce Arnold Christie	23 Augusta Road FAIRLIGHT NSW 2094
Mr Robert Goodson	8 Cecil Street FAIRLIGHT NSW 2094

Name:	Address:
Victoria Taylor	
Nicole Buckland Oliver Weston	12 Cecil Street FAIRLIGHT NSW 2094
Ms Stephanie Mary Dryden Mrs Cecily Anne Dryden	4 Cecil Street FAIRLIGHT NSW 2094
Mrs Linda Jane Hart	18 Cecil Street FAIRLIGHT NSW 2094
Mr Geoffrey Philip Moore	16 Cecil Street FAIRLIGHT NSW 2094
Mr Francis Thornhill	3 Cecil Street FAIRLIGHT NSW 2094
Mr Steven Garry Witt Mrs Liana Janet Witt	6 Cecil Street FAIRLIGHT NSW 2094

A total of eleven (11) submissions were received by Council in relation to the application, with seven (7) in support and four (4) in objection.

The following issues were raised in the submissions and each have been addressed below:

- Manly LEP numerical non-compliances
- Manly DCP numerical non-compliances
- Privacy/amenity impacts
- Concern with notification of application
- Submissions in support of the application - the proposal will retain the scale and character of the street without degrading the amenity of surrounding residences.

The matters raised within the submissions are addressed as follows:

- Manly LEP numerical non-compliances
Comment:
The proposal is non-compliant with regard to building height and floor space ratio. A full assessment of these non-compliances is completed under *Part 4 Principal Development Standards*. In summary the issues raised have merit in relation to the Floor Space Ratio control and accordingly this has been included in the Recommendation as a reason for refusal.
- Manly DCP numerical non-compliances
Comment:
A full assessment of the Manly DCP non-compliances is completed under *Part 4 Development Controls*. In summary the issues raised have merit in relation to privacy and setback controls and accordingly this has been included in the Recommendation as a reason for refusal.
- Privacy/amenity impacts
Comment:
The proposal is considered to result in unreasonable privacy/amenity impacts on the adjoining properties to the north. A full assessment of amenity impacts is completed under *Part 3 General Principles of Development*. In summary the issues raised have merit and accordingly this has been included in the Recommendation as a reason for refusal.
- Concern with notification of application
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Comment:

The application was notified to adjoining property owners in accordance with Manly DCP Clause 2.3.

- Submissions in support of the application - the proposal will retain the scale and character of the street without degrading the amenity of surrounding residences.

Comment:

The proposed addition is consistent in appearance with the existing streetscape as viewed from Cecil Street. However, proposal will result in unreasonable visual and amenity impacts on the adjoining properties to the north, as detailed in the report.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

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)

Nil

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.74m	2.8%	No
Floor Space Ratio	0.6:1 128.1m ²	0.68:1 146m ²	13.97%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	8.5m
Proposed:	8.74m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	2.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause Height of buildings development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 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.

Comment:

Clause 4.3 Height of buildings development standard is not 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 Secretary has been obtained.

cl 4.6 (4)(a)(i) (Justification) assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The applicant's written request (attached to this report as an Appendix) has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The Applicant's written request (attached to this report as an Appendix) has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

In doing so, the applicant's written request has demonstrated that the proposed development satisfies cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

- (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:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 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 building height and roof form is not excessive and is consistent with the topographic landscape. The RL of the proposed roof ridge is consistent with the previously approved first floor of the adjoining semi-detached dwelling at No. 12 Cecil Street.

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

Comment:

The proposed building height not compliance is minor in extent and does not contribute to unreasonable bulk or scale.

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 non-compliant height will not result in unreasonable disruption to views to, from or between residential development and public spaces.

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 no unreasonable overshadowing of adjoining properties or public spaces.

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:

N/A

Conclusion:

The proposed development satisfies the underlying objectives of the Height of buildings development standard.

Zone objectives

The underlying objectives of the R1 General Residential zone

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

- Comment:

The proposal retains the existing residential use.

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

- Comment:

The proposal retains the existing housing type and density.

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

- Comment:

N/A

Conclusion:

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

cl 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

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 where the variation is not greater than 10%. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Development Determination Panel.

Description of non-compliance:

Requirement:	0.6:1 (128.1m ²)
Proposed:	0.68:1 (146m ²)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	13.97%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 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.

Comment:

Clause 4.4 Floor space ratio development standard is not 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 Secretary has been obtained.

cl 4.6 (4)(a)(i) (Justification) assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The applicant's written request (attached to this report as an Appendix) claims consistency with the objectives of the Floor space ratio development standard.

The written request is not considered to adequately demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- The proposal does not maintain an appropriate visual relationship between the subject site and properties to the rear (north). The properties on the northern side of Cecil Street are generally single storey with the exception of first floor additions constructed at No. 6 and the adjoining semi-detached dwelling at No. 12, which is more modest in scale with a significant rear setback.
- The proposed additions are assessed as excessive in bulk and scale and result in unreasonable privacy impacts on the adjoining properties to the rear.

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicant's written request (attached to this report as an Appendix) has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The applicant's written request claims that there are sufficient environmental planning grounds to justify contravening the development standard.

The written request is not considered to adequately demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The proposal is assessed as resulting in unreasonable environmental and amenity impacts, specifically in relation to privacy impacts and bulk and scale.

As such, the applicant's written request has not demonstrated that the proposed development is consistent with cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has not adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6(3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of cl 4.4 Floor space ratio development standard are:

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

Comment:

The proposed first floor addition, as viewed from Cecil Street, is consistent with existing examples of first floor additions within the streetscape.

The development satisfies this objective.

(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 bulk of the proposed additions will not unreasonably obscure any important landscape or townscape features.

The development satisfies this objective.

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

Comment:

The proposed addition is excessive in bulk and scale and is not considered to maintain an appropriate visual relationship with the existing character and landscape of the area.

The development does not satisfy this objective.

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

Comment:

The amenity impacts resulting from the bulk of the proposed additions will have an adverse impact on the use and enjoyment of adjoining land.

The development does not satisfy this objective.

(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:

N/A

Conclusion:

The proposed development does not satisfy the underlying objectives of the Floor space ratio development standard.

Zone objectives

The underlying objectives of the R1 General Residential zone

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

Comment:

The proposal retains the existing residential use.

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

Comment:

The proposal retains the existing housing type and density.

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

Comment:

N/A

Conclusion:

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

cl 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

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 where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

As the application seeks to vary the development standard by more than 10% the concurrence of the Secretary is assumed subject to determination by Council's Development Determination Panel.

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

No significant excavation is proposed.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 213.5m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	East: 6.8m	Bed 2: 6.6m	Yes
		Master bed: 6.2m - 6.8m	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.97m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Porch: 4.7m	Yes
		Dwelling: 6.83m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Bed 2: 2.2m	1.8m	No
	Master bed: 2.1m - 2.27m	1.18m	No
4.1.4.4 Rear Setbacks	8m	Deck: 5m	No
		Dwelling: 8m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area 117.4m ²	42.6% 90.9m ²	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 31.8m ²	81.7% 74.3m ²	Yes
	1 native trees	0 trees	No
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	Existing

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	No	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The proposal provides a compliant landscaped area but does not include any native tree planting in accordance with Clause 4.1.5.2. The proposal could comply subject to condition.

3.4.1 Sunlight Access and Overshadowing

The proposal will result in no unreasonable overshadowing impacts, with the majority of additional overshadowing falling on the road reserve of Cecil Street to the south.

3.4.2 Privacy and Security

Description of non-compliance

The proposal is inconsistent with objectives 1 and 2 below.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control 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.

Comment:

The proposal will result in unreasonable privacy and direct viewing between the subject site and adjoining properties to the rear. The proposed ground floor rear deck setback is non-compliant and the topography of the area allows for significant overlooking due to the elevation of the deck above the properties to the rear. As such, the proposal is not appropriately designed to minimise loss of privacy.

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

Comment:

The proposal will not compromise access to light and air, but does not provide sufficient privacy to the adjoining properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal does not impact opportunities for passive surveillance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

Description of non-compliance

The proposed ground floor rear and first floor side setbacks are non-compliant.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control 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.

Comment:

The proposed additions are consistent with surrounding development as viewed from Cecil Street and will not unreasonably impact the streetscape.

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.*

Comment:

The proposal does not unreasonably impact sunlight access, views, streetscape character or traffic conditions. The proposed side setback does result in no unreasonable privacy impacts, subject to the inclusion of conditions requiring windows 04 and 06 to be highlight windows. However, the proposed rear setback non-compliance to the ground floor deck is considered to result in unreasonable overlooking of the adjoining properties to the rear and is not supported. The rear setback to the first floor is inadequate to maintain privacy to the northern neighbours due to the topography of the land and also enables overlooking. Further, the bulk and scale of the proposal would be reduced with a greater

rear setback consistent with that of the adjoining semi. As such, the proposal is inconsistent with this objective.

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

Comment:

Flexibility in the siting of the dwelling in this case would result in unreasonable privacy impacts, and is not considered appropriate.

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.*

Comment:

The proposed total open space area is non-compliant, but a compliant landscape area is provided.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The proposed total open space is non-compliant but the landscaped area is compliant. The proposal could be conditioned to comply with the native trees requirement of Clause 4.1.5.2.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

No existing car parking is provided on the site. The provision of on-site car parking would result in unreasonable visual impact on the streetscape and the introduction of vehicular access to the site would result in a reduction in on-street car parking. As such, car parking is not considered necessary or appropriate in the context of the site.

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.

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;
- Manly Local Environment Plan;
- Manly 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1465 for the Alterations and additions to a semi detached dwelling on land at Lot B DP 442575, 10 Cecil Street, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
7. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest as the proposal is inconsistent with the aims and objectives of the Manly LEP and DCP.