

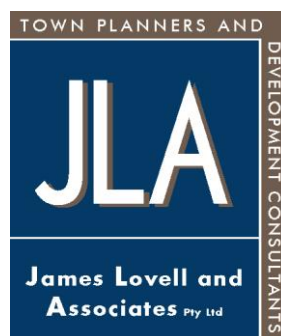
**Alterations and Additions to an Existing Dwelling House**

**8 Barrabooka Street, Clontarf**

**Statement of Environmental Effects**

30 June 2022

Ref: 22118



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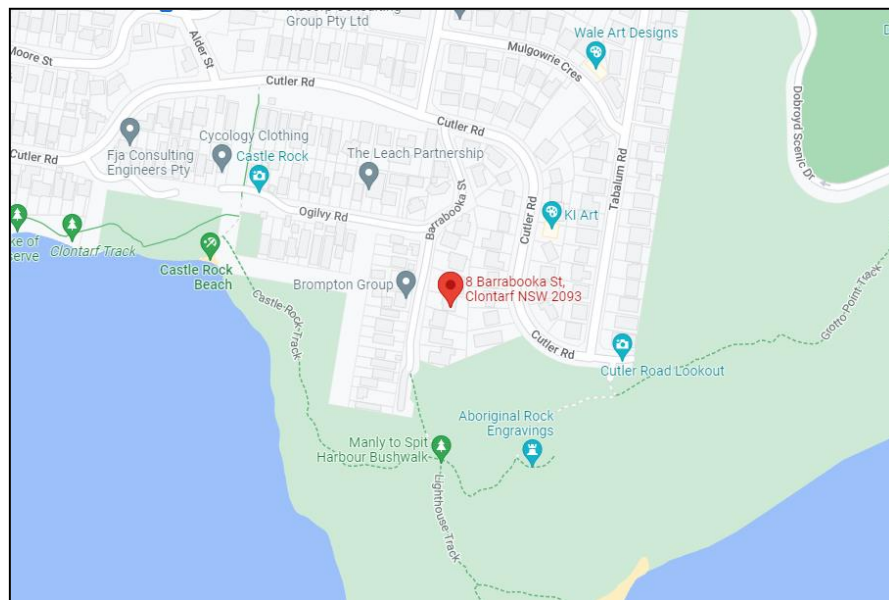
**Attachment A Request to Vary the Building Height Control**

## 1. INTRODUCTION

### 1.1 Preamble

This Statement of Environmental Effects (SEE) has been prepared to accompany a Development Application (DA) to Northern Beaches Council for alterations and additions to the existing dwelling house located at No. 8 Barrabooka Street, Clontarf.

The subject site is located on the eastern side of Barrabooka Street, approximately 60 metres to the south of Ogilvy Road. The site encompasses an area of approximately 780.7m<sup>2</sup>, and is an irregular rectangle in shape with a frontage of 15.24 metres to Barrabooka Street.



**Figure 1: Location**

The site is currently occupied by a 2 – 3 storey dwelling house, incorporating a double garage at the lower ground floor level, accessed via a driveway extending to/from Barrabooka Street. A swimming pool occupies a portion of the rear yard surrounded by paving and landscaping.

The proposed development comprises alterations and additions to the existing dwelling house, including the substantial retention of the existing building, demolition of the existing structures in front of the dwelling, and expansion of the building to provide additional floor space and car parking.

The proposed works are intended to expand the limited floor space to better accommodate the owner's requirements, and improve the overall amenity of the dwelling, including the relationship between indoor and outdoor spaces.

Further, the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site in response to the topographical fall towards the west.

The proposed development includes a minor variation to the building height control, primarily as a consequence of the modified topographical conditions of the site, and in particular, the previous excavation associated with the existing access driveway.

Finally, the building form has been carefully designed to substantially preserve the amenity of the surrounding properties in terms of the key considerations of visual bulk, privacy, views and overshadowing.

## **1.2 Purpose**

This SEE has been prepared pursuant to the provisions of the *Environmental Planning and Assessment Act 1979* and accompanying *Regulation*. To that end, it:

- identifies the site and provides details of its locational context;
- describes the physical characteristics of the proposed development;
- identifies the environmental planning instruments and policies that apply to the site and considers the proposed development against those that are relevant; and
- provides an assessment of the proposed development against the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

## **2. SITE DESCRIPTION**

### **2.1 Site Details**

The subject site formally comprises Lot 17 in Deposited Plan 758044, and is commonly known as No. 8 Barrabooka Street, Clontarf.

The site is located on the eastern side of Barrabooka Street, approximately 60 metres to the south of Ogilvy Road. The site encompasses an area of approximately 780.7m<sup>2</sup>, and is an irregular rectangle in shape with a frontage of 15.24 metres to Barrabooka Street.

The topography of the site has been partially modified to accommodate the existing improvements, and generally falls downhill towards the street frontage, with a maximum level change from boundary to boundary of approximately 9 metres.

The existing vegetation is generally limited to a scattering of relatively small trees, shrubs and groundcovers. The existing vegetation is located beyond the footprint of the existing structures, and none of the existing vegetation is considered a constraint to the proposed development.

The site is currently occupied by a 2 – 3 storey dwelling house, incorporating a double garage at the lower ground floor level. Vehicular access is provided via a driveway extending to/from the Barrabooka Street frontage.

The lower ground floor level accommodates a double garage, rumpus room, study and amenities. The upper ground floor level accommodates the main living rooms, a bedroom and amenities. The first floor level accommodates three (3) bedroom and amenities.

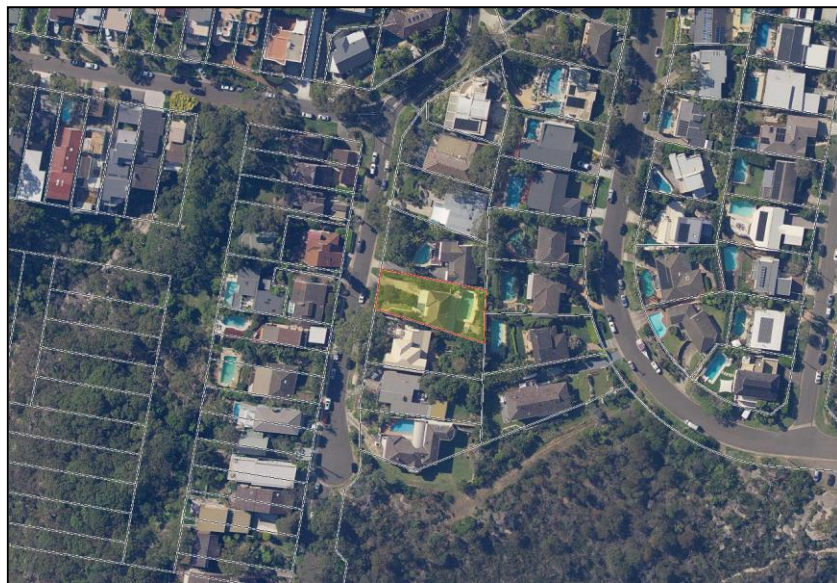
A swimming pool occupies a portion of the rear yard surrounded by paving and landscaping. The rear yard is accessed from the main living rooms at the upper ground floor level. The upper ground floor level also has access to a terrace orientated towards the front (west), and the three (3) bedrooms at the first floor level have access to a balcony orientated towards the front (west).



**Photograph 1: Subject Site Viewed from Barrabooka Street**

## **2.2 Site Context**

The site is located within an established residential environment characterised by a predominance of relatively large detached dwellings. The existing buildings extend across multiple development eras, contributing to an eclectic mix of building forms and architectural styles.



**Figure 2: Site Context**

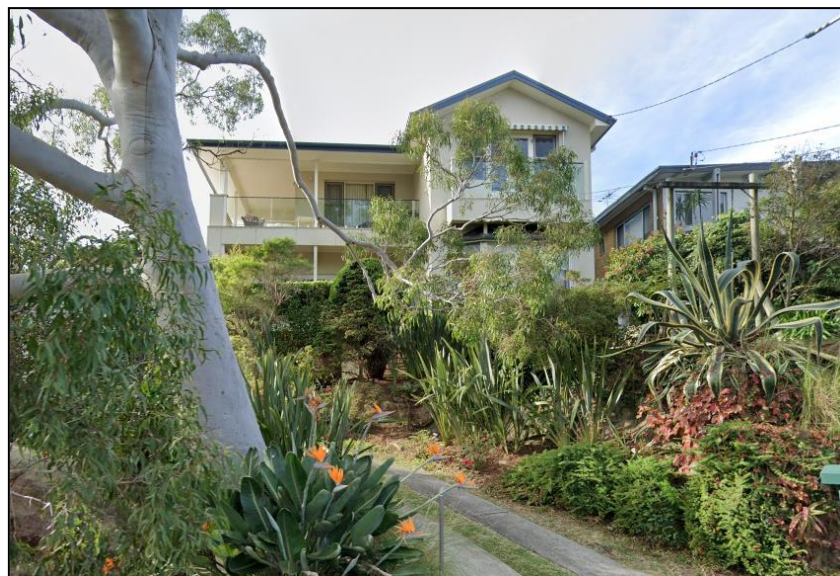


The site is adjoined to the north by a 2-storey detached dwelling house (No. 10 Barrabooka Street). The existing dwelling includes off-street car parking provided within a garage at the ground floor level, accessed via a driveway extending to/from Barrabooka Street. An elevated swimming pool is located in front of the dwelling.



**Photograph 2: Adjoining Property to the North (No. 10 Barrabooka Street)**

The site is adjoined to the south by a 2-storey detached dwelling house (No. 6 Barrabooka Street). The existing dwelling includes off-street car parking within a garage at the ground floor level, accessed via a driveway extending to/from Barrabooka Street.



**Photograph 3: Adjoining Property to the South (No. 6 Barrabooka Street)**

The site is adjoined to the east by a series of detached dwelling houses fronting Cutler Road. The adjoining dwellings include swimming pools within the setback to the boundary to the subject site. The surrounding properties to the east are topographically elevated above the subject site.

The existing development on the opposite side of Barrabooka Street comprises a series of detached dwelling houses. The existing dwellings are predominately orientated towards the west, and the properties are topographically located below the level of the subject site.



### **3. PROPOSED DEVELOPMENT**

#### **3.1 General Description**

The proposed development is illustrated in the Architectural Plans prepared by *Walsh Architects*, dated 23 June 2022.

The proposed development comprises alterations and additions to the existing dwelling house, including the substantial retention of the existing building, demolition of the existing structures in front of the dwelling, and expansion of the building to provide additional floor space and car parking.

The existing lower ground floor level is being retained, with some of the internal walls removed to amenities and sub-floor storage space.

Further, the lower ground floor level is being expanded towards the west, with the additional floor area accommodating a bedroom, living space and kitchen, with access from the living room to a balcony/terrace.

The existing upper ground floor level is being retained, and extended towards the west, with the additional floor area accommodating two (2) bedrooms, a rumpus room and amenities, with access from the rumpus room and a bedroom to a balcony.

The existing first floor level is being retained and incorporated into the expanded dwelling.

The existing garage is being retained, with additional off-street car parking for two (2) vehicles located within a partially excavated basement level to the west of the expanded lower ground floor level and upper ground floor levels above.

The proposed works are intended to expand the limited floor space to better accommodate the owner's requirements, and improve the overall amenity of the dwelling, including the relationship between indoor and outdoor spaces.

Further, the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site in response to the topographical fall towards the west.

Finally, the proposed alterations and additions have been carefully designed to seamlessly integrate the new works with the architectural style and composition of the existing building.

#### **4. SECTION 4.15 ASSESSMENT**

The heads of consideration incorporated in Section 4.15 of the *Environmental Planning and Assessment Act 1979* comprise:

- any environmental planning instrument;
- any proposed instrument that is or has been the subject of public consultation and that has been notified to the consent authority;
- any development control plan;
- any planning agreement or draft planning agreement;
- any matters prescribed by the Regulation;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality;
- the suitability of the site for the development;
- any submissions made in accordance with the Act or the Regulations; and
- the public interest.

##### **4.1 Environmental Planning Instruments**

The site is subject to the following environmental planning instruments:

1. State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021;
2. State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021; and
3. Manly Local Environmental Plan (LEP) 2013.

##### SEPP (Resilience and Hazards) 2021

Clause 4.6 specifies that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is, or is likely to be contaminated, and if the land is, or is likely to be contaminated, whether the land requires remediation before the land is developed for the proposed use.

The site is currently used for residential purposes, and evidently has not been zoned or used for industrial, agricultural or defense purposes at any times in the lands recent history.

In the circumstances, there is no evidence to suggest that the land is likely to be contaminated to the extent that would render it unsuitable for continued residential use.

SEPP (Biodiversity and Conservation) 2021

Chapter 10 of the SEPP relates to land identified on the Sydney Harbour Catchment Map (which includes the subject site) and generally aims to ensure the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained, ensure a healthy, sustainable environment on land and water, achieve a high quality and ecologically sustainable urban environment, ensure a prosperous working harbour and an effective transport corridor, encourage a culturally rich and vibrant place for people, ensure accessibility to and along Sydney Harbour and its foreshores, ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity, and provide a consolidated, simplified and updated legislative framework for future planning.

The site is located within the *Foreshores and Waterways Area*, however the site does not have a frontage to the harbour or its foreshores. Further, normal precautions will be taken during the construction of the proposed development to ensure there are no adverse impacts in terms of runoff and water quality.

In the circumstances, the relevant matters for consideration include the appearance of the development from the waterway and foreshores as follows:

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

The site is located within an established residential environment characterised by a predominance of relatively large detached dwellings. The existing buildings extend across multiple development eras, contributing to an eclectic mix of building forms and architectural styles.

The proposed development maintains a very comfortable transition in building height between the adjoining buildings to the north and south, with the proposed alterations and additions reflecting the topographical conditions of the carriageway of Barrabooka Street, generating a building height effectively a floor below the height of the adjoining building to the south, and at the gutter/eave level of the adjoining building to the north.

Further, the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site towards the front.

In the circumstances, the proposed alterations and additions will effectively appear as part of the established backdrop of buildings in the locality, and the building form, architectural composition and palette of external materials and finishes will make a positive contribution to the scenic quality of the locality when viewed from the harbour and surrounding foreshore areas.

#### Manly LEP 2013

The site is zoned R2 – Low Density Residential pursuant to the Manly LEP 2013, and “dwelling houses” are permissible in the zone with the consent of Council.

Clause 2.3 specifies that the consent authority shall have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The relevant objective of the zone is *“To provide for the housing needs of the community within a low density residential environment”*.

The proposed development is consistent with, or not antipathetic to, the relevant objective of the zone on the basis that the housing needs of the community will continue to be met within an established low density residential environment.



Clause 4.3 specifies a maximum building height of 8.5 metres. The existing building includes a relatively small variation to the building height control, and that portion of the existing building is being retained.

The proposed alterations and additions comply with the building height control, with the exception of the north-eastern corner of the roof which extends to a maximum height of approximately 8.9 metres.

In that regard, the minor variation is primarily a consequence of the modified topographical conditions of the site, and in particular, the previous excavation associated with the existing access driveway.

Clause 4.6 of the LEP specifies that consent may be granted for development even though the development would contravene a development standard imposed by an environmental planning instrument, in circumstances where compliance with the standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify contravening the standard.

Clause 4.4 specifies a maximum floor space ratio (FSR) of 0.4:1. The proposed alterations and additions provide a gross floor area of approximately 316m<sup>2</sup>, representing an FSR of 0.4:1.

Clause 6.2 relates to earthworks and requires the consent authority to consider any detrimental impacts on existing drainage patterns or soil stability, the likely future use of the land, the quality of the fill or excavated material, the amenity of neighbouring properties, the likelihood of disturbing relics, any adverse impacts on any waterway, drinking catchment or environmentally sensitive area, the potential impacts on any heritage items, and any measures to mitigate the impacts of the development.

The proposed development does not include significant or excessive excavation, and the construction phase will be carefully managed to ensure there are no adverse impacts on the environment, or the amenity of neighbouring properties.

Clause 6.4 requires the consent authority to be satisfied that the proposed development is designed to maximise permeable surfaces, includes on-site stormwater retention if practicable, and avoids any

significant adverse impacts on adjoining properties, native bushland and receiving waters.

The DA is accompanied by *Concept Stormwater Drawings (Smart Structures Australia, June 2022)* which describe the proposed method of stormwater management for the site. The proposed development includes on-site stormwater retention, and standard measures to ensure there are no adverse impacts on adjoining properties, native bushland or receiving waters.

Clause 6.9 requires the consent authority to consider the impacts of the proposed development on the visual amenity of the harbour and coastal foreshore, including overshadowing and loss of views, the measures to protect and improve the scenic quality of the coastline, and the suitability of the development given its type, location and design, and its relationship with and impact on the foreshore.

The proposed development will have no physical impacts on the harbour or coastal foreshore in terms of overshadowing or loss of views. Further, the site does not have a frontage to the harbour or its foreshores, and normal precautions will be taken during the construction of the proposed development to ensure there are no adverse impacts in terms of runoff and water quality.

The proposed development maintains a very comfortable transition in building height between the adjoining buildings to the north and south, and the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site towards the front.

In the circumstances, the proposed alterations and additions will effectively appear as part of the established backdrop of buildings in the locality, and the building form, architectural composition and palette of external materials and finishes will make a positive contribution to the scenic quality of the locality when viewed from the harbour and surrounding foreshore areas.

The LEP does not incorporate any further controls of specific relevance to the proposed development.

## 4.2 Proposed Environmental Planning Instruments

The Council is in the process of reviewing and consolidating the existing planning controls, however there are no proposed environmental planning instruments of specific relevance to the proposed development.

## 4.3 Development Control Plans

The site is subject to the following development control plan:

1. Manly Development Control Plan (DCP) 2013.

### Manly DCP 2013

The Manly DCP 2013 is generally intended to supplement the provisions of the Manly LEP 2013, and provide more detailed objectives and controls to guide development.

Section 3.42 of the *Environmental Planning and Assessment Act 1979* specifies that the provisions of a DCP “are not statutory requirements”.

Further, Section 4.15(3A)(b) specifies that the consent authority “is to be flexible in applying” the provisions of a DCP, and “allow reasonable alternative solutions that achieve the objectives of those standards for dealing with that aspect of the development”.

Part 3 of the DCP provides *General Principles of Development*, and Part 4.1 provides *Residential Development Controls*. The relevant provisions<sup>1</sup> of the DCP are considered in Table 4.3.1 as follows:

Table 4.3.1 – Manly Development Control Plan 2013		
Control	Proposed	Satisfactory
<b>Part 3 – General Principles of Development</b>		
<b>3.1 – Streetscape (Residential Areas)</b>		
<b>Complementary Design and Visual Improvement</b> Development in the streetscape	<b>Complementary Design and Visual Improvement</b> The proposed development has	Yes

<sup>1</sup> The relevant provisions of the DCP comprise those which relate specifically to the proposed development and/or those which would not normally be required and/or provided as Conditions of Consent and/or as part of a Construction Certificate.

should be designed to complement the predominant building form and architectural style in the locality, ensure the bulk and design does not detract from the scenic amenity of the area, maintain compatible building heights, avoid elevated structures, visually improve the streetscape, and complement the materials and finishes dominant in the locality.	been carefully designed to seamlessly integrate the new works with the architectural style and composition of the existing building. Further, the overall height, bulk, scale and siting of the building are compatible with the variable nature of surrounding development, and the building form reflects the topographical conditions of the site, with the building form stepping down the site towards the front.	
Maximise setbacks to enable open space to dominate buildings.	The proposed development maintains the existing setback to the rear boundary. The setbacks to the side and front boundary provide sufficient spatial separation and open space to enable the open space to dominate the building. Further, existing and new landscaping is proposed within the setbacks to the boundaries, contributing to a hierarchy of trees, shrubs and groundcovers.	Yes
<b>Front Fences and Gates</b> The siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality.	<b>Front Fences and Gates</b> The existing boundary fencing is being maintained.	Yes
<b>Roofs and Dormer Windows</b> Roof forms should complement, but not necessarily replicate the predominant form in the locality.	<b>Roofs and Dormer Windows</b> The locality is characterised by a diversity of roof forms, and the proposed roof form is compatible with the architectural form and composition of the building, and the variable nature of development in the surrounding locality.	Yes

Roofs should be designed to avoid or minimise view loss and reflectivity.	The proposed alterations and additions maintain a low level roof form, and reflect the topographical conditions of the carriageway of Barrabooka Street, generating a building height effectively a floor below the height of the adjoining building to the south, and at the gutter/eave level of the adjoining building to the north.	Yes
<b>Garages, Carports and Hardstand Areas</b> Garages and hardstand areas should be designed so as to not dominate the street frontage.	<b>Garages, Carports and Hardstand Areas</b> The proposed garage is orientated at 90 degrees to the street frontage, and the off-street car parking and hardstand areas will not dominate the street frontage.	Yes
<b>3.3 – Landscaping</b>		
The design, quantity and quality of open space should respond to the character of the area.	The existing and proposed landscaping will contribute to a hierarchy of trees, shrubs and groundcovers that will contribute to the overall landscaped character of the site and surrounds.	Yes
Development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees, understorey vegetation and remnant native ground cover species.	The proposed development does not include the removal of any existing trees, and the retained landscaping will be supplemented by a hierarchy of new trees, shrubs and groundcovers.	Yes
<b>3.4 – Amenity (Views, Overshadowing, Overlooking, Privacy, Noise)</b>		
<b>Sunlight Access and Overshadowing</b> New development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent	<b>Sunlight Access and Overshadowing</b> The proposed development will have no impact on the existing solar access to the rear yard or upper level balcony of the	Yes



properties between 9am and 3pm at the winter solstice.	adjoining property to the south between 9am and 3pm in mid-winter (No. 6 Barrabooka Street). Further, the proposed development will have no impact on the existing solar access to any other surrounding properties.	
For adjacent buildings with an east-west orientation, the windows and glazed doors to living rooms should receive solar access for a period of at least 2 hours from 9am to 3pm at the winter solstice.	The proposed development will have no impact on the upper level windows, doors or private open space of the adjoining property to the south between 9am and 3pm in mid-winter (No. 6 Barrabooka Street). Further, the proposed development will have no impact on the existing solar access to any other surrounding property.	Yes
<b>Privacy and Security</b> Use narrow, translucent or obscured glass windows to maximise privacy where necessary.	<b>Privacy and Security</b> The potential overlooking of the adjoining properties has been moderated by limiting the number of new window openings along the southern façade, and providing frosted glazing. Similarly, the new window openings along the northern façade include frosted glazing, and are otherwise located forward of the adjoining dwelling house to the north.	Yes
Give consideration to the protection of acoustical privacy in the design and management of development.	The main living rooms and associated open space are generally orientated towards the front and rear of the site to minimise the potential acoustic impacts to the adjoining properties to the north and south.	Yes
<b>Maintenance of Views</b> Minimise the loss of views from neighbouring and nearby dwellings and from public spaces.	<b>Maintenance of Views</b> The primary views in the locality are enjoyed in a westerly direction, and the proposed	Yes

	development will have no impact on any existing primary views. Further, the proposed alterations and additions are located to the front of the existing building, and effectively remain a storey below the existing building on the site. In the circumstances, the proposed development will have no significant or unreasonable views from any surrounding properties.	
Views between and over buildings are to be maximised.	The proposed development will have no impact on any existing views between or over the existing building.	Yes
<b>3.5 - Sustainability</b>		
The design of buildings may reduce summer sun penetration to north, east and west facing walls of buildings incorporated by the use of external solar shading devices, such as awnings, external venetians, balconies, pergolas, eaves, overhangs, sails and the like.	The proposed building has been carefully designed to maximise internal light penetration, with the west facing balconies effectively providing shading to the majority of the glazed openings orientated towards the west.	Yes
Incorporate appropriate solar shading devices.	The west facing balconies effectively providing shading to the majority of the glazed openings orientated towards the west.	Yes
Use roof mounted solar panels where possible.	The roof surface can potentially accommodate solar panels if required.	Yes
Optimise natural ventilation through building design.	The proposed dwelling will provide good natural ventilation.	Yes
Incorporate water sensitive urban design and maximise water conservation.	The proposed development incorporates sensitive urban design, and water efficient fixtures and appliances will be installed throughout the completed	Yes

	building.	
Use materials that have a good thermal mass, such as bricks, concrete and stone.	The existing and proposed building materials have good thermal mass properties.	Yes
<b>3.7 – Stormwater Management</b>		
Achieve compliance with Council's "Water Management for Development Policy".	The DA is accompanied by <i>Concept Stormwater Drawings</i> (Smart Structures Australia, June 2022) which describe the proposed method of stormwater management for the site.	Yes
<b>3.8 – Waste Management</b>		
Provide a bin storage area of sufficient size to accommodate the required number of garbage bins.	The garbage bins will be stored within the garage which provides sufficient area for the required number of bins, and access to the driveway for transport and collection purposes.	Yes
<b>3.9 – Mechanical Plant Equipment</b>		
External mechanical plant systems must be acoustically enclosed and located away from neighbours living areas.	The external mechanical plant will be acoustically treated to ensure there are no adverse acoustic impacts for neighbouring properties.	Yes
<b>3.10 – Safety and Security</b>		
Incorporate principles of "safety in design".	The site is consistent with principles of "safety by design" and will improve casual surveillance of the public domain.	Yes
<b>Part 4.1 – Residential Development Controls</b>		
<b>4.1.1 – Dwelling Density, Dwelling Size and Subdivision</b>		
Dwelling density of 1 dwelling per 950m <sup>2</sup> of site area.	The site encompasses an area of 780.7m <sup>2</sup> , and the existing single dwelling usage is being retained.	Yes
Dwellings are to have a minimum internal area of 112sqm (6-bedrooms).	The proposed dwelling has an internal area of approximately 316m <sup>2</sup> .	Yes
<b>4.1.2 – Height of Buildings</b>		
Maximum building height of 8.5 metres.	The proposed alterations and additions comply with the	Appropriate Design

	building height control, with the exception of the north-eastern corner of the roof which extends to a maximum height of approximately 8.9 metres. In that regard, the minor variation is primarily a consequence of the modified topographical conditions of the site, and in particular, the previous excavation associated with the existing access driveway.	Solution
Maximum wall height of 7.7 metres (based on site gradient of 1:5).	The proposed alterations and additions provide a wall height of approximately 5.0 – 8.6 metres. The variation to the wall height control effectively comprises the north-eastern corner of the building, and is primarily a consequence of the modified topographical conditions of the site, and in particular, the previous excavation associated with the existing access driveway.	Appropriate Design Solution
Maximum building height of 2 storeys.	The proposed alterations and additions provide two (2) habitable levels above a partially excavated car parking area. The proposed additions remain below the height of the existing building, and the building form steps down the site to reflect the sloping topography.	Appropriate Design Solution
<b>4.1.3 – Floor Space Ratio</b>		
Maximum floor space ratio of 0.4:1.	The proposed dwelling has an FSR of 0.4:1.	Yes
<b>4.1.4 – Setbacks (front, side and rear)</b>		
Front setback to relate to neighbouring properties, or a minimum of 6 metres.	The locality is characterised by a diversity of front boundary setbacks, and there is no clearly defined building line. Irrespective,	Yes

	the proposed building effectively matches the alignment of the adjoining and surrounding buildings to the south (No. 2, 4 and 6 Barrabooka Street), and the building line generally corresponds to the predominant building line established by the dwellings at No's 14 and 16 Barrabooka Street to the north. Further, the proposed setbacks is 10.16 metres which substantially exceeds the minimum requirements of 6 metres.	
Side boundary setback of 1/3 of the adjacent wall height.	The setbacks to the northern and southern boundaries are greater than 1/3 the height of the adjacent wall, with the minor exception of the south-western corner of the building. Irrespective, the average setbacks to the side boundaries are substantially more than 1/3 of the height of adjacent walls.	Minor Variation
Minimum rear boundary setback of 8 metres.	The proposed alterations and additions maintain the existing rear boundary setback of approximately 14.5 – 17.0 metres.	Yes
<b>4.1.5 – Open Space and Landscaping</b>		
Total open space area of 60% of the site area, including 40% of the required open space as landscaped area.	The proposed development provides a total area of open space of more than 60% of the site area, including 38% of the required open space as soft landscaped area (299m <sup>2</sup> ). The proposed development could achieve strict compliance with the landscaped area by removing a small amount of existing paving, however the removal of that paving would serve no planning	Minor Variation



	purpose in terms of the useability of the site, or the landscaped setting of the site and surrounds.	
Minimum area of private open space of 18m <sup>2</sup> with a minimum dimension of 3 metres.	The private open space has a combined area of substantially more than 18m <sup>2</sup> , all of which has a minimum dimension of more than 3 metres.	Yes
Provide a minimum of four (4) native trees.	The proposed landscaping includes four (4) native trees.	Yes
<b>4.1.6 – Parking, Vehicular Access and Loading</b>		
Minimise the visual impact of garages on the streetscape, and maintain the desired character of the locality.	The proposed garage is orientated at 90 degrees to the street frontage, and the off-street car parking and hardstand areas will not dominate the street frontage.	Yes
Maximum width of the garage is not to exceed 50% of the frontage, up to a maximum width of 6.2 metres.	The proposed garage is orientated at 90 degrees to the street frontage, and the front wall will not present as a garage structure to the street.	Yes
Provide two (2) off-street car parking spaces.	The existing off-street car parking is being retained, and two (2) additional car parking spaces are proposed.	Yes
<b>4.1.7 – First Floor and Roof Additions</b>		
The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area.	The proposed alterations and additions have been carefully designed to seamlessly integrate the new works with the architectural style and composition of the existing building. The proposed development will not degrade the amenity of the surrounding residences, or the aesthetic quality of the former Manly Council area.	Yes
<b>4.1.8 – Development on Sloping Sites</b>		
The design of development must	The proposed additions remain	Yes

respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.	below the height of the existing building, and the building form steps down the site to reflect the sloping topography. Further, the proposed development will not cause any significant or adverse impacts on any existing public or private views.	
<b>4.1.9 – Swimming Pools, Spas and Water Features</b>		
Swimming pools must not be elevated more than 1 metre above natural ground level, and must not be located between the front boundary and the building line.	The existing swimming pool located within the rear yard is being retained.	Yes
The setback of the outer edge of the pool concourse from the side and rear boundaries must be at least 1 metre, with the water line being at least 1.5 metres from the boundary.	The existing swimming pool located within the rear yard is being retained.	Yes
Swimming pools and concourse areas must not comprise more than 30% of the total open space.	The existing swimming pool located within the rear yard is being retained.	Yes
<b>4.1.10 – Fencing</b>		
Open and transparent fences may be up to 1.5 metres high where at least 30% of the fence is open or transparent.	The existing fencing and boundary treatments are being retained.	Yes

#### 4.4 Planning Agreements

There are no planning agreements of relevance to the proposed development.

#### 4.5 Impacts of the Development

The proposed development has been carefully designed to provide a very high level of amenity, with an improved relationship between indoor and outdoor spaces, capitalising on the views of the harbour and foreshore areas to the west.

Further, the building form has been carefully designed to substantially preserve the amenity of the surrounding properties in terms of the key considerations of visual bulk, privacy, views and overshadowing.

The proposed development has been carefully designed to seamlessly integrate the new works with the architectural style and composition of the existing building.

Further, the overall height, bulk, scale and siting of the building are compatible with the variable nature of surrounding development, and the building form reflects the topographical conditions of the site, with the building form stepping down the site towards the front.

The proposed development will have no impact on the existing solar access to the rear yard, upper level windows, doors or private open space of the adjoining property to the south between 9am and 3pm in mid-winter (No. 6 Barrabooka Street). Further, the proposed development will have no impact on the existing solar access to any other surrounding property.

The potential overlooking of the adjoining properties has been moderated by limiting the number of new window openings along the southern façade, and providing frosted glazing. Similarly, the new window openings along the northern façade include frosted glazing, and are otherwise located forward of the adjoining dwelling house to the north.

The primary views in the locality are enjoyed in a westerly direction, and the proposed development will have no impact on any existing primary views. Further, the proposed alterations and additions are located to the front of the existing building, and effectively remain a storey below the existing building on the site. In the circumstances, the proposed development will have no significant or unreasonable impact on views from any surrounding properties.

Finally, to ensure that sediment laden waters are not released from the site during construction works, erosion and sediment control measures are to be established on the site and maintained during the demolition and construction phases of the proposed development.

#### **4.6 Suitability of the Site**

The site is located within an established residential environment characterised by a predominance of relatively large detached dwellings. The existing buildings extend across multiple development eras, contributing to an eclectic mix of building forms and architectural styles.

The proposed dwelling will provide a very good level of amenity, and substantially preserve the amenity of the surrounding properties in terms of the key considerations of visual bulk, privacy, views and overshadowing.

#### **4.7 Public Interest**

The proposed development serves the public interest by providing a dwelling with a very good level of amenity, and substantially preserve the amenity of the surrounding properties in terms of the key considerations of visual bulk, privacy, views and overshadowing.

## 5. CONCLUSION

The site is located on the eastern side of Barrabooka Street, approximately 60 metres to the south of Ogilvy Road. The site encompasses an area of approximately 780.7m<sup>2</sup>, and is an irregular rectangle in shape with a frontage of 15.24 metres to Barrabooka Street.

The site is currently occupied by a 2 – 3 storey dwelling house, incorporating a double garage at the lower ground floor level. A swimming pool occupies a portion of the rear yard.

The proposed development comprises alterations and additions to the existing dwelling house, including the substantial retention of the existing building, demolition of the existing structures in front of the dwelling, and expansion of the building to provide additional floor space and car parking.

The proposed works are intended to expand the limited floor space to better accommodate the owner's requirements, and improve the overall amenity of the dwelling, including the relationship between indoor and outdoor spaces.

Further, the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site in response to the topographical fall towards the west.

Finally, the proposed development will provide a dwelling with a very high level of amenity, without imposing any significant or adverse impacts on the amenity of any surrounding land.



## **ATTACHMENT A**

### **Request to Vary the Building Height Control**

## INTRODUCTION

Clause 4.3 of the Manly Local Environmental Plan (LEP) 2013 specifies a maximum building height of 8.5 metres. The existing building includes a relatively small variation to the building height control, and that portion of the existing building is being retained.

The proposed alterations and additions comply with the building height control, with the exception of the north-eastern corner of the roof which extends to a maximum height of approximately 8.9 metres.

In that regard, the minor variation is primarily a consequence of the modified topographical conditions of the site, and in particular, the previous excavation associated with the existing access driveway.

The portions of the existing and proposed building that extend above the building height control are identified on the plan extract below.



In the circumstances, this “*written request*” has been prepared to vary the building height control pursuant to Clause 4.6 of the LEP.

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

## CLAUSE 4.6 OF THE MANLY LEP 2013

Clause 4.6(1) of the Manly LEP 2013 is facultative and is intended to allow flexibility in applying development standards in appropriate circumstances.

Clause 4.6 does not directly or indirectly establish a test that non-compliance with a development standard should have a neutral or beneficial effect relative to a complying development (Initial at 87).

Clause 4.6(2) of the LEP specifies that *“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”*.

Clause 4.6(3) specifies that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard (Initial at 88).

Clause 4.6(4) specifies that 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.*

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

## **CONTEXT AND FORMAT**

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015;*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;*
- *Hansimikali v Bayside Council [2019] NSWLEC 1353;*
- *Rebel MH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130;*
- *Big Property Group Pty Ltd v Randwick City Council [2021] NSWLEC 1161; and*
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243.*

*"Varying development standards: A Guide"* (August 2011) outlines the matters that need to be considered in DA's involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been 'virtually abandoned or destroyed' by the Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
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.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. The Applicant relies upon ground 1 in *Wehbe* to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

In that regard, Preston CJ, in *Wehbe* states that "... *development standards are not ends in themselves but means of achieving ends*". Preston CJ, goes on to say that as the objectives of a development standard are likely to

have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

*As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.*

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The decision of Pain J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Further, Commissioner Tuor, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is “consistent with” the objectives of the development standard and the zone, is not a requirement to “achieve” those objectives. It is a requirement that the development be ‘compatible’ with them or ‘capable of existing together in harmony’. It means “something less onerous than ‘achievement’”.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a “better environmental planning outcome for the site” relative to a development that complies with the development standard.

In *Hansimikali v Bayside Council* [2019] NSWLEC 1353, Commissioner O’Neill found that it is not necessary for the environmental planning grounds relied upon by the Applicant to be unique to the site.

Finally, in *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161, Commissioner O’Neill found that “The desired future character of an area cannot be determined by the applicable development standards for height and FSR along”.

Further, Commissioner O’Neill found that “The presumption that the development standards that control building envelopes determine the

*desired future character of an area is based upon a false notion that those building envelopes represent, or are derived from, a fixed three-dimensional masterplan of building envelopes for the area and the realisation of that masterplan will achieve the desired urban character”.*

Similarly, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243*, Commissioner O’Neill found that *“The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site. The application of the compulsory provisions of cl 4.6 further erodes the relationship between numeric standards for building envelopes and the realised built character of a locality (SJD DB2 at [62]-[63]). Development standards that determine building envelopes can only contribute to shaping the character of the locality (SJD DB2 at [53]-[54] and [59]-[60])”.*

## **ASSESSMENT**

Is the requirement a development standard?

The building height control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The objectives of the building height control are expressed 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.*

In relation to objective (a), the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site in response to the topographical fall towards the west.

Further, the proposed development maintains a very comfortable transition in building height between the adjoining buildings to the north and south, with the proposed alterations and additions reflecting the topographical conditions of the carriageway of Barrabooka Street, generating a building height effectively a floor below the height of the adjoining building to the south, and at the gutter/eave level of the adjoining building to the north.

In relation to objective (b), the proposed development complies with the applicable floor space ratio (FSR) control, and the overall height, bulk and scale of the building are compatible with the variable nature of surrounding development.

In relation to objective (c), the site is located within an established residential environment characterised by a predominance of relatively large detached dwellings. The existing buildings extend across multiple development eras, contributing to an eclectic mix of building forms and architectural styles.

The existing development generally reflects the sloping topographical conditions of the locality, and the irregular alignment of the road carriageways extending through the locality.

In the circumstances, the existing development in the locality forms a layered pattern of buildings when viewed from the harbour and foreshore areas, interspersed by vegetation.

In the circumstances, the proposed development will maintain an appropriate visual form when viewed from the harbour and foreshore areas, and the numerical variation to the building height control will not impact negatively on the visual appearance of the building, or the desired future character of the locality.

Further, the primary views in the locality are enjoyed in a westerly direction, and the proposed development will have no impact on any existing primary views. Further, the proposed alterations and additions are located to the front of the existing building, and effectively remain a storey below the existing building on the site. In the circumstances, the proposed development will have no significant or unreasonable impact on views from any surrounding properties.

In relation to objective (d), the proposed development will have no impact on the existing solar access to the rear yard, upper level windows, doors or private open space of the adjoining property to the south between 9am and 3pm in mid-winter (No. 6 Barrabooka Street).

Further, the proposed development will have no impact on the existing solar access to any other surrounding property or public spaces.

In relation to objective (e), the site is zoned R2 – Low Density Residential, and the site is not located in a *recreation or environmental protection zone*.

In summary, the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published “*Varying development standards: A Guide*” (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

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

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

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

The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

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

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

Further, strict compliance with the building height control would effectively require the removal of parts of the upper level roof in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.

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;*

The building height control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.

Further, the objectives of Clause 4.6 of the LEP includes to provide “*an appropriate degree of flexibility in applying certain development standards to particular development*”.

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would effectively require the removal of parts of the upper level roof in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties.

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

The adjectival phrase “*environmental planning*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979*, including the objects set out in Section 1.3 (Initial at 23).

The objects of the Act are expressed 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 proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- the variation in the building height control is minor in nature, and limited to a small portion of the existing and proposed roof elements;
- the variation to the building height control primarily arises due to the modified topographical conditions of the site, and in particular, the excavation associated with the existing access driveway;
- the substantial majority of the building remains comfortably below the building height control;
- the proposed works have been carefully designed to reflect the topographical conditions of the site, with the building form stepping down the site in response to the topographical fall towards the west;
- the proposed development maintains a very comfortable transition in building height between the adjoining buildings to the north and south, with the proposed alterations and additions reflecting the topographical conditions of the carriageway of Barrabooka Street, generating a building height effectively a floor below the height of the adjoining building to the south, and at the gutter/eave level of the adjoining building to the north;
- the proposed development complies with the applicable floor space ratio (FSR) control, and the overall height, bulk and scale of the building are compatible with the variable nature of surrounding development;
- the site is located within an established residential environment characterised by a predominance of relatively large detached dwellings, extending across multiple development eras, contributing to an eclectic mix of building forms and architectural styles;

- the proposed development will maintain an appropriate visual form when viewed from the harbour and foreshore areas, and the numerical variation to the building height control will not impact negatively on the visual appearance of the building, or the desired future character of the locality;
- the primary views in the locality are enjoyed in a westerly direction, and the proposed development will have no impact on any existing primary views;
- the proposed alterations and additions are located to the front of the existing building, and effectively remain a storey below the existing building on the site. In the circumstances, the proposed development will have no significant or unreasonable impact on views from any surrounding properties;
- the proposed development will have no impact on the existing solar access to the rear yard, upper level windows, doors or private open space of the adjoining property to the south between 9am and 3pm in mid-winter (No. 6 Barrabooka Street);
- strict compliance with the building height control would effectively require the removal of parts of the upper level roof in circumstances where the proposed development is compatible with the desired future character of the locality, and will not impose any significant or unreasonable impacts on the visual character of the public domain, or the amenity of surrounding properties
- the proposed development will promote good design and the amenity of the built environment which is a recently incorporated object of the Act: *"(g) to promote good design and amenity of the built environment"*;
- the Council has consistently adopted an orderly but flexible approach to the implementation of development standards (including the building height control) in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations;
- the proposed development is consistent with, or not antipathetic to, the relevant objectives of the R2 – Low Density Residential zone; and
- the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the numerical variation.

Are there any matters of State or regional significance?

The proposed numerical variation to the building height control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the building height control in other instances.

In that regard, the objectives of Clause 4.6 of the LEP includes to provide *"an appropriate degree of flexibility in applying certain development standards to particular development"*.

Any other matters?

There are no further matters of relevance to the proposed variation to the building height control.

Zone Objectives and Public Interest

The site is zoned R2 – Low Density Residential and the relevant objective of the zone is *"To provide for the housing needs of the community within a low density residential environment"*.

The proposed development is consistent with, or not antipathetic to, the relevant objective of the zone on the basis that the housing needs of the community will continue to be met within an established low density residential environment.

Further, the proposed development serves the public interest by providing a dwelling with a very good level of amenity, and substantially preserve the amenity of the surrounding properties in terms of the key considerations of visual bulk, privacy, views and overshadowing.

## **CONCLUSION**

The purpose of this submission is to formally request a variation in relation to the building height control in Clause 4.3 of the Manly LEP 2013.

In general terms, strict compliance with the building height control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the numerical variation.