



northern  
beaches  
council

## Northern Beaches Local Planning Panel Report

2018/099789

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

### **SUMMARY:**

#### **Application Lodged:**

27 November 2018

#### **Applicant:**

Squillace Architects

#### **Owner:**

Cecil and Isabel Koutsos

#### **Estimated Cost:**

\$2,647,500

#### **Zoning:**

MLEP, 2013 – R3 Medium Density Residential

#### **Heritage:**

Adjacent to Item 2 Stone Kerbs

#### **NSW LEC:**

Not applicable

#### **Notification:**

4 December 2017 to 15 January 2018

#### **Submissions received:**

Nil

#### **Site Inspected:**

8 February 2018

#### **LEP (4.6) Variations proposed:**

Height of Building and Floor Space Ratio

#### **DCP Variations proposed:**

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

#### **Recommendation:**

Approval

### **Subject Property and surrounding area**



The subject property is commonly known as 96 North Steyne and legally known as Lot 101 in DP 1110110. The site is located on the western side of North Steyne. The property is irregular in shape and has a frontage of 29.46m to North Steyne, an average depth of 44m and an overall site area of 1,335m<sup>2</sup>. The property currently contains a five-storey residential flat building with vehicular access via an existing driveway from Pine Street to an existing basement car park. The property is level.

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

#### **Property Burdens and Constraints**

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

#### **Site History/Background**

Recent relevant applications on site include:

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

#### **Description of proposed development**

The proposal seeks consent for the following works:

- Extensions of each floor (totalling an additional 269.5m<sup>2</sup> GFA);
- Reduction of floor area at ground, first second and third floors (totalling a reduction of 10.5m<sup>2</sup> GFA);
- Reconfiguration of balconies; and
- Addition of privacy screens.

#### **Internal Referrals**

##### **Engineering Comments**

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

##### **Building Comments**

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

##### **Landscaping Comments**

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

##### **Heritage Comments**

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

##### **Waste Comments**

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

*(2WM05)*

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

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

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

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

*(2WM06)*

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

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

*ANS*

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

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

#### **Coastal Management Comments**

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

#### **External Referrals**

#### **AUSGRID**

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

#### **Planning Comments**

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

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

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

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

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

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

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

As previously outlined the proposed development is for the alteration of a five-storey residential flat 'housing' development, which consists of basement car parking and 22 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

## **DESIGN REVIEW PANEL**

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

## **DESIGN QUALITY PRINCIPLES**

### **Principle 1: Context and Neighbourhood Character**

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

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

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

### **Principle 2: Built Form and Scale**

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

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

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

**Principle 3: Density**

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

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

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

**Principle 4: Sustainability**

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

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

**Principle 5: Landscape**

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

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

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

**Principle 6: Amenity**

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

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

**Principle 7: Safety**

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

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

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

### **Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

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

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

### **Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

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

## **APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

<b>Development Control</b>	<b>Criteria / Guideline</b>	<b>Comments</b>
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	No change to the existing approved siting of the development is proposed.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	No change to the approved orientation of the development is proposed.
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	No change to the existing approved transition between the private and public domain of the development is proposed.
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)	The existing approved development does not include any communal open space. The proposed development does not alter this.

<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="462 226 1019 577"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (%)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p>The existing approved development does not include deep soil zones. The proposed development does not alter this.</p>
Site area	Minimum dimensions	Deep soil zone (%)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="435 688 1044 1003"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The proposed development does not provide compliant building separation in accordance with this clause. However, as demonstrated below, the setbacks of the proposed development are generally consistent with the existing development, and with existing comparable developments in the locality. Further, privacy screening is included to mitigate direct viewing and acoustic privacy impacts. As such, the proposed development does not result in unreasonable privacy impacts, and therefore meets the intention of this clause.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>No change to the approved pedestrian access and entry arrangements is proposed.</p>												
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>No change to the approved vehicular access is proposed.</p>												

<b>Bicycle and Car Parking</b>	<p>For development in the following locations: On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	The proposed development makes no change to the approved solar and daylight access arrangements.
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</p>	The proposed development makes no change to the approved ventilation arrangements.



<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>The proposed development makes no change to the approved ceiling heights.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
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For 2 storey apartments	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area													
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If located in mixed used areas	2.7m for main living area floor  2.4m for second floor, where its area does not exceed 50% of the apartment area													
<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>The proposed development reconfigures the internal layout of the majority of dwellings within the existing residential flat building. However, each dwelling retains compliant apartment sizes and room dimensions.</p>		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													

	<p>4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	Units 9, 10, 15, 16 and 22 are not compliant with this criterion. Units 10 and 16 are unchanged by the proposal. The proposal provides more useable private open space in a logical in the form of terraces. As such, the altered terraces that do not meet the requirements (Units 9, 15 and 22) are considered to meet the intention of this criterion.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m <sup>2</sup>	-														
	1 bedroom apartments	8m <sup>2</sup>	2m														
	2 bedroom apartments	10m <sup>2</sup>	2m														
	3+ bedroom apartments	12m <sup>2</sup>	2.4m														
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	The proposed development makes no change to the approved number of units of the single circulation core (22 units over 5 storeys).															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	The proposed development makes no change to the approved storage arrangements.					
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Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	The proposed reconfiguration of the approved dwellings adequately respond to noise sources.															
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The proposed development makes no change to the approved siting layout and design of the building in relation to noise and pollution.															
Configuration																	
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	The proposed development makes no change to the approved apartment mix.															

<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The proposed development provides a more modernised façade, thereby creating greater visual interest, while respecting the character of the local area.																																			
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	The proposed modifications to the roof are consistent with the existing roof form and the streetscape.																																			
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The proposed development does not alter the approved existing landscaped area.																																			
<b>Planting on Structures</b>	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		The existing approved development does not include any planting on structures. The proposed development does not alter this.
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Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent																																	
Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
<b>Universal Design</b>	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.	The proposed development makes no change to the existing adaptable unit arrangements.																																			
<b>Adaptive Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable.																																			

<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Not applicable.
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.	Not applicable.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	The proposed development is compliant with this criterion.
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?	The proposed development is compliant with this criterion.
<b>Waste Management</b>	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposed development is compliant with this criterion.
<b>Building Maintenance</b>	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The proposed development is compliant with this criterion.

## STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
  - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
  - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
  - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The parking rate specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments) does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The proposed modifications make no alteration to the parking requirement for the site. The proposed apartment sizes are compliant. No change is made to ceiling heights for each apartment. The application is not being refused in relation to these matters.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
  - (a) the design quality principles, and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:
  - (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
  - (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment: Adequate consideration has been given to the design of the proposed amendments in relation to the design quality principles and the objectives specified in the Apartment Design Guide, as demonstrated in the assessment above, and in the submitted SEPP 65 report submitted with the application.

### **Manly Local Environmental Plan 2013**

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

### **Zone R3 Medium Density Residential**

#### **Objectives of zone**

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

The proposed development retains the use of the site as a residential flat building.

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

The proposed development retains the existing variety of housing types in the locality.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

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

The proposed development appropriately revitalises the existing residential flat building development.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

#### Part 4 Principal development standards

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

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	13m	14.9m (existing maximum)  14.37m to proposed roof extension	No	See comment below.
4.4	Floor Space Ratio	1.5:1 2002.5m <sup>2</sup>	2.33:1 3,110.5m <sup>2</sup>	No	See comment below.

#### 4.6 Exceptions to development standards

##### Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	13m
Proposed	14.37m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	10.53% to development standard 0% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

##### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

##### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed development makes amendments to the roof form, to allow for greater shelter for the terraces below, resulting in the height of building non-compliance. The proposed roof extensions are consistent with the existing roof form and that of existing developments in the streetscape. As such, the proposed modifications will not unreasonably impact upon the character of the locality.

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

Comment: The bulk and scale of the proposed development is controlled by articulation of the building by terrace and balcony spaces, and is consistent with other developments in the immediate vicinity. Further, the proposed development is acceptable in relation to floor space ratio for the reasons detailed in the section of this report relating to Part 4 of the Manly LEP 2013 – Principal Development Standards – Floor Space Ratio.

*(c) to minimise disruption to the following:*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment: The proposed development does not unreasonably disrupt views to, from or between public spaces, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development, Maintenance of Views.

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

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

*(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: Not applicable. The subject site is zoned R3 Medium Density Residential.

### **What are the underlying objectives of the zone?**

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

The underlying objectives of Zone R3 Medium Density Residential are addressed as follows:

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

The proposed development retains the use of the site as a residential flat building.

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

The proposed development retains the existing variety of housing types in the locality.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

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

The proposed development appropriately revitalises the existing residential flat building development.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

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

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

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

Comment: The proposed development provides for an appropriate level of flexibility in applying the height of building development standard.

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

Comment: The proposed development results in a better outcome by providing allowing for refurbishment of the approved development, without resulting in unreasonable impacts to the subject site or adjacent sites.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

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

Comment: The applicant has provided the following justification for the contravention of the height of building development standard:

*"The applicant requests a variation to the Height of Buildings (HOB) development standard, as prescribed in clause 4.3 of Manly LEP 2013. This request is made pursuant to clause 4.6 Exceptions to Development Standards.*

*The following is a summary of the proposal:*

<i>Requirement</i>	<i>HOB: 13m</i>
<i>Existing building</i>	<i>Building: 14.37 approx</i>
<i>Proposed</i>	<i>Building: 14.37 approx</i>
<i>Is the planning control in question a development standard?</i>	<i>Yes</i>
<i>Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?</i>	<i>Numerical</i>
<i>If numerical enter a % variation to requirement</i>	<i>Change in HOB is 10.5%</i>

**1. Introduction**

*A Development Application is submitted to Manly Council for alterations and additions to an existing residential flat building which includes additions and subtractions to the floor area of the building and an overall upgrade of each façade of the building. There is no change to the maximum height of the existing building. The top of the roof RL 20.79m AHD.*

*The maximum height of the existing building is 14.9m. The Manly LEP 2013 prescribes the maximum height limit for this site as 13m. As the existing building is non-compliant with the applicable height limit under Clause 4.3 of the Manly LEP 2031 a variation to the development standard accompanies the development application, as an addendum to the submitted Statement of Environmental Effects.*



Clause 4.3 of the Manly LEP 2013 provides:

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

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

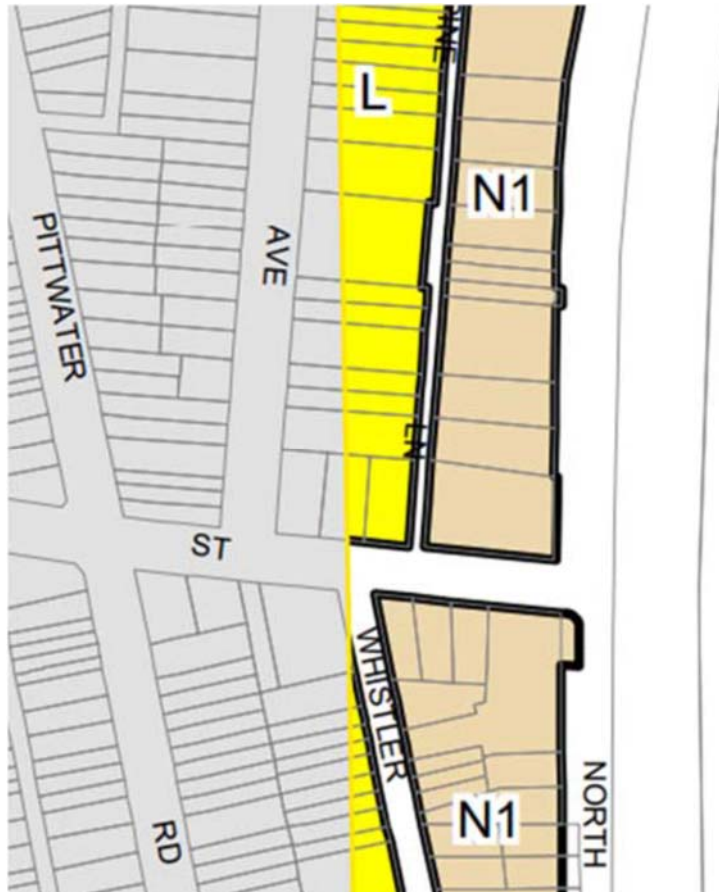


Figure 1: Extract of MLEP 2013 Height of Buildings Map 005

## **2. Mechanism for a variation**

The Manly LEP 2013 contains provisions under Clause 4.6 which allow for the consent authority to consider certain variations to the principal development standards listed under Part of the LEP. The variations may only be considered reasonable where they have been suitably justified by an applicant to be 'unreasonable or unnecessary' in the circumstances of the case, pertaining to site conditions, surrounding character of the built form, etc. The provisions of Clause 4.6 are reproduced below:

### **4.6 Exceptions to development standards**

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

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

#### **(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument**

However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

#### **(4) Development consent must not be granted for development that contravenes a development standard unless:**

- (a) the consent authority is satisfied that:
  - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been obtained.

#### **(5) In deciding whether to grant concurrence, the Director-General must consider:**

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

#### **(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:**

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

*Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4.*

*Having regard to the above, in summary a development standard can be varied if a submission is made (in writing) by the applicant justifying a contravention to the development standard on the grounds that:*

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

*The consent authority must however be satisfied that:*

- the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3), and*
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

### **3. Legal Principles**

*The decisions of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ; [2015] NSWLEC 90; and [2015] NSWCA 248; and subsequently Miskovich v Waverley Council [2016] NSWLEC 101, Bates Smart Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1001, provide recent assistance as to the application of Clause 4.6 and some guidance can still be gained from the relevant case law dealing with SEPP 1, where relevant.*

*As outlined in Bates Smart Pty Ltd v Council of the City of Sydney [2014] NSWLEC1001, cl 4.6 of LEP 2012 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development.*

*The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).*

*The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).*

*The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).*

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

#### **4. Is the planning control in question a development standard?**

Clause 4.3 provides *inter-alia* that (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

'Development Standards' has the following meaning ascribed to it under Section 4(1) of the Environmental Planning and Assessment Act, 1979:

"development standards" means provisions of an environmental planning instrument in relation to the carrying out of development, being provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of -

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;
- (b) the proportion or percentage of the area of a site which a building or work may occupy;
- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;
- (d) the cubic content or floor space of a building;
- (e) the intensity or density of the land, building or work, the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) drainage;
- (k) the carrying out of earthworks;
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;
- (m) the provisions of services, facilities and amenities demanded by development;
- (n) the emission of pollution and means for its prevention or control or mitigation; and
- (o) such other matters as may be prescribed;"

The Clause relevant in this instance is:

- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;

On this basis, it is my opinion that Clause 4.3 of the Manly LEP 2013, although referred to as a local standard is a development standard and not a "prohibition" in respect of development, and one amenable to an objection under Clause 4.6. This would be consistent with Council's intention.

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

Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007), sets out 5 ways of establishing that compliance is unreasonable or unnecessary as follows:

*“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.....*

*43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.....*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.....*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.....*

*A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.....*

*However, care needs to be taken not to expand this fifth way of establishing that compliance is unreasonable or unnecessary beyond its limits. It is focused on “particular land” and the circumstances of the case. Compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the particular land is found to be unreasonable or inappropriate. If the particular land should not have been included in the particular zone, the standard would not have applied, and the proposed development would not have had to comply with that standard. To require compliance with the standard in these circumstances would be unreasonable or unnecessary.*

*50 However, so expressed, this way is limited. It does not permit of a general inquiry into the appropriateness of the development standard for the zoning. An objection would not be well-founded by an opinion that the development standard is inappropriate in respect of a particular zoning (the consent authority must assume the standard has a purpose).....*

*The requirement that the consent authority form the opinion that granting consent to the development application is consistent with the aims of SEPP 1 as set out in clause 3 (one of which is the promotion and coordination of the orderly and economic use and development of land) makes it relevant “to consider whether consent to the particular development application encourages what may be summarised as considered and planned development” or conversely may hinder a strategic approach to planning and development.”*

*Set out below is an analysis of the standard, having regard to the principles enunciated in both the Winten and Wehbe judgements as applicable:*

**Comments:**

*The existing building is a longstanding development on the North Steyne promenade, reflecting Council's desired character for the area as promoted in the Manly LEP 2013 which prescribes a maximum building height limit of 13m for the area.*

*The height of the existing building is acknowledged by Council's staff as non-compliant, however the building is deemed acceptable and is supported in its current context in relation to its bulk, scale and general appearance.*

*The site has a prominent corner location, three road frontages and frontage to the tourist hub of North Steyne promenade. These site characteristics create the opportunity to have a visually attractive building that essentially 'hugs the corners' of the street and optimises outlooks towards the beach.*

*Council has accepted this premise for this site in the past. It is purported that this has not changed and the overall development should be assessed more in terms of the outcomes of its street appeal and context than compliance with a numerical standard (in this particular case). The building is directly opposite the substantial and imposing heritage listed North Steyne Surf Club. The subject site, known as Bella Vista Apartments, is a complementary landuse to the surf club as well as the North Steyne beachfront.*

*It is impossible to restrict the existing building to strict compliance with the prescribed numerical building height in this case as the development already breaches the development standard. The change in the percentage of non-compliance and impact of the proposed floor area and façade upgrades on the overall bulk, scale and street appeal and appearance of the building is a more reasonable assessment of the variation. The variation is a maximum of 1.37m or 10.5% of the prescribed height limit for the site.*

*The building does not draw attention to itself beyond that reasonably expected on this corner site. It remains in context with the approved height, bulk and scale of surrounding built form. Further it remains respectful of the North Steyne Surf Life Saving Club at the end of Pine Street. There is no attempt to emulate the design, colours or materials of the surf club, rather the proposed works to the apartments provide a modern, vibrant street appearance that is complementary to the surf club. The existing building height does not result in any additional overshadowing of private or public property. Being a corner site, located on the north-western corner, there are no shadowing impacts.*

*In terms of view sharing, the existing building is a longstanding development on this corner site. Developments along Pine Street, Pine Lane and North Steyne have developed beside and opposite. Its height, bulk, scale and form have already been taken into account. There is no change to the current relationship of these development as a result of this proposal and the existing height of the building, albeit that it is numerically non-compliant.*

*There are sufficient environmental planning grounds to justify contravening the development standard.*

*The proposal is consistent with the established height, bulk and scale of development within the immediate vicinity. Strict application of the current height limit for the site would prevent achievement of the proposed update and improvements to the building which are considered to outweigh the application of the numerical standard in this instance.*

*The existing building height does not result in any significant adverse impacts. The upgrades and improvements to the onsite private open space, amenity for residents, opportunities for increased passive surveillance of the street and public realm from the larger balconies and modernization of the building appearance are considered positive for the wider community, both socially and economically.*

*New, refreshed and updated buildings in prominent tourist locations are generally interrupted as a positive economic environment and dynamic place to be, hence drawing on the national and international attraction of the Manly beachfront area.*

**6. Is it consistent with the objectives of the standard and objectives for the zone?**

*The Land and Environments Court's recent position in considering consistency with objectives, is the adoption of Pearlman J in Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21 where,*

*Her Honor expresses the following opinion [at 27]:*

*"The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, not even that it is compatible."*

*The objectives of the Height of Building standard are:*

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

**Comments:**

- The proposed building is consistent with the prevailing established and likely future character of buildings and heights in the immediate locality.*
- The bulk and scale of the development has been appropriately managed by accepted design techniques including variation to texture, materials and colours.*
- The existing building is a longstanding development on the North Steyne, opposite the beach front, its bulk and scale, partly defined by its existing height does not have an adverse impact on development in the immediate area and is consistent with its corner location.*
- Views between the streets and the beach are not significantly affected by the proposal.*
- Solar access to public open spaces and adequate sunlight access to private open spaces and to habitable rooms is maintained.*

*The objectives of the R3 zone are:*

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Comments:**

*The existing building caters for use as both a temporary residential accommodation, and also permanent full-time rentals and/or owner-occupiers. This provides an opportunity consistent with other apartments in the locality to cater for the tourist market that provide a positive economic contribution to the local economy. The proposed works aim at updating and revitalizing the building in line with current trends that seek good quality indoor-outdoor recreation and entertainment areas, clean crisp architectural lines and a squarer more contemporary appearance of elements and features of buildings. This will further enhance the ongoing role of Manly as its positive recognition to national and international visitors.*

**7. Conclusion**

*The breach of the development standard does not raise any matter of significance (other than a positive one) for the proposal and surrounding properties, nor is it contrary to the public interest or raise any matter which would be of State or Regional significance other than as discussed above. In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.*

*As detailed above, there are sufficient environmental planning grounds to justify the contravention of the height of building development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the North Steyne foreshore area.*

*Whilst the existing and proposed non-compliance with the numerical HOB standard is acknowledged, the development is compatible and consistent with the likely future bulk, scale and form of adjoining and surrounding developments within the locality, and the variation is well absorbed within the context of the existing and surrounding built form and not be readily perceptible. There is no reasonable argument as to why strict application of the HOB standard should be applied for the subject site and the development given the circumstances outlined.*

*The breach of the development standard does not cause any significantly detrimental impacts to surrounding properties which in isolation would warrant strict adherence to the current, nonconforming HOB. The proposal is in the public interest and the proposal form is commensurate with that of adjoining and surrounding residential developments. Whilst the proposed breach may be considered numerically significant (being over 10%), the additional building height is contained within the existing overall built form and envelope of the existing building.*



*In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.*

*As detailed above, there are sufficient environmental planning grounds to justify contravening the development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the area. The additions and alterations do not result in an inconsistent built form in this particular part of the locality given the number of three, four and six storey developments in close proximity to the property.*

*Critically, the new work does not add to the height or result in the non compliance, nor block any existing available public or private views towards North Steyne beach and nor does it result in overshadowing impacts to western or southern adjoining neighbours (over and above any existing impacts).*

*As the above submission demonstrates that:*

- compliance with the development standard are unreasonable or unnecessary in the circumstances of the case; and*
- there are sufficient environmental planning grounds to justify contravening the development standard; and*
- the matters required to be demonstrated by 4.6(3) have been addressed;*
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

*The variation to the standard is worthy of support, which is fundamental to the approval of the development application.”*

- (4) Development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

- (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: The applicant’s written request adequately addresses the relevant matters.

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. The proposed variation is greater than 10% is consistent with the objectives of the zone and therefore is required to be determined by the Northern Beaches Local Planning Panel.

### Floor Space Ratio

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

Requirement	1.5:1 (2,002.5m <sup>2</sup> )
Proposed	2.33:1 (3,110.5m <sup>2</sup> )
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	55.33% to development standard 9% to existing non-compliance

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

#### **Is the planning control in question a development standard?**

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

#### **What are the underlying objectives of the development standard?**

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

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

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

Comment: The proposed development is consistent with the existing and desired streetscape character, in that the street contains a number of examples of residential flat building developments, with comparable developments being recently approved in the area.

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

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

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

Comment: The proposed amendments are adequately set back from site boundaries, thereby providing an appropriate visual relationship between existing development and the proposed new works.

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

Comment: The proposed development does not unreasonably impact upon the use or enjoyment of adjacent properties or the public domain.

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

Comment: Not applicable. The subject site is zoned R3 Medium Density Residential.

### What are the underlying objectives of the zone?

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

The underlying objectives of Zone R3 Medium Density Residential are addressed as follows:

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

The proposed development retains the use of the site as a residential flat building.

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

The proposed development retains the existing variety of housing types in the locality.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

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

The proposed development appropriately revitalises the existing residential flat building development.

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

Not applicable. The proposed development retains the use of the site as a residential flat building.

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

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

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

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

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

Comment: The proposed development results in a better outcome by providing allowing for refurbishment of the approved development, without resulting in unreasonable impacts to the subject site or adjacent sites.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

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

Comment: The applicant has provided the following justification for the contravention of the height of building development standard:

*"The applicant requests a variation to the Floor Space Ratio development standard, as prescribed in clause 4.4 of Manly 2013. This request is made pursuant to clause 4.6 Exceptions to Development Standards.*

*The following is a summary of the proposal for easy reference:*

Requirement	Site Area: 1,335sqm FSR: 1.5:1
Existing building	GFA: 2,885.9sqm FSR: 2.54:1
Proposed	GFA: increase of 191.8sqm over 5 levels Total GFA: 3,077.4sqm FSR: 2.71:1
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Change in FSR is 0.17:1 or 6.7%

### **1. Introduction**

A Development Application is submitted to Manly Council for alterations and additions to an existing residential flat building which includes the additions and subtractions to the overall floor area of the building. The total change is floor space equates to 191sqm of additional gross floor area. The additions are spread across the habitable floor levels of the buildings, thereby not impacting significantly on the bulk or scale of the building. These changes in floor area are combined in extensions of balcony areas to update the visual appearance of the building and improve the indoor/outdoor private open space areas of the units. This is achieved within a quality architectural upgrade of the external appearance of the building within the streetscape.

As the existing and proposed building are non-compliant with the applicable floor space ratio under Clause 4.4 of the Manly LEP 2031 a variation to the development standard is submitted with the Statement of Environmental Effects.

Clause 4.4 of the Manly LEP 2013 provides:

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

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

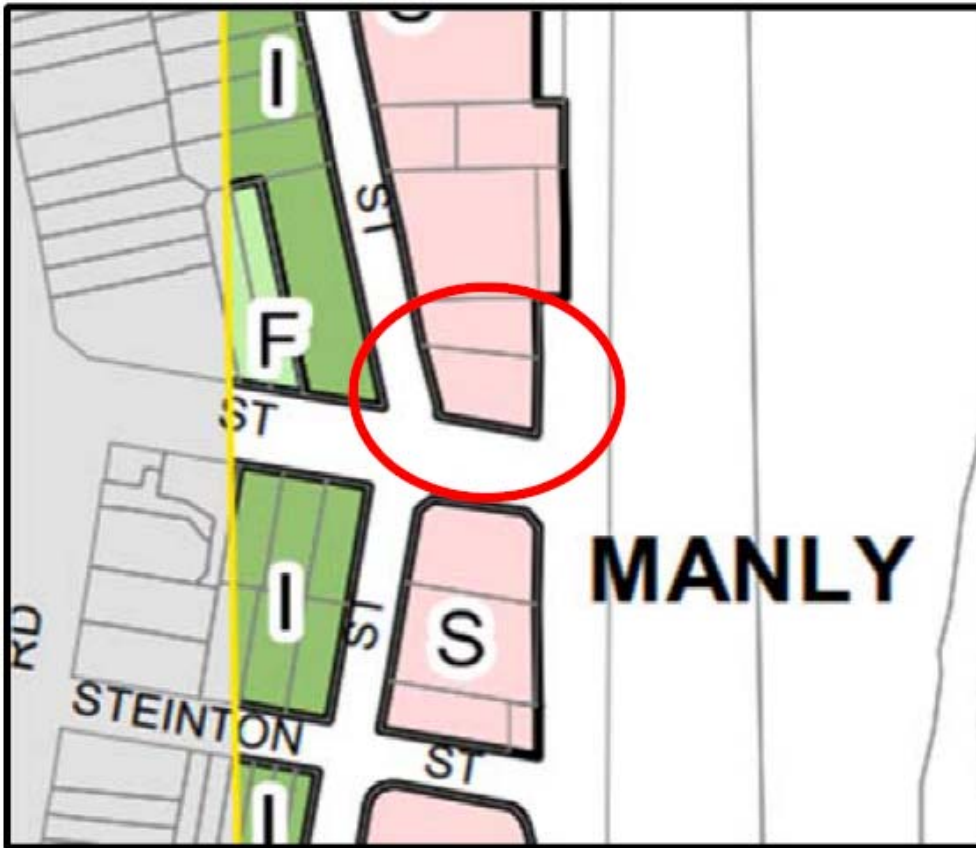


Figure 1: Extract of MLEP 2013 Floor Space Ratio Map 005

## 2. Mechanism for a variation

The Manly LEP 2013 contains provisions under Clause 4.6 which allow for the consent authority to consider certain variations to the principal development standards listed under Part of the LEP. The variations may only be considered reasonable where they have been suitably justified by an applicant to be 'unreasonable or unnecessary' in the circumstances of the case, pertaining to site conditions, surrounding character of the built form, etc. The provisions of Clause 4.6 are reproduced below:

### 4.6 Exceptions to development standards

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
    - i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
  - (c) clause 5.4.

Having regard to the above, in summary a development standard can be varied if a submission is made (in writing) by the applicant justifying a contravention to the development standard on the grounds that:

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

The consent authority must however be satisfied that:

- the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3), and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

### **3. Legal Principles**

The decisions of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ; [2015] NSWLEC 90; and [2015] NSWCA 248; and subsequently *Miskovich v Waverley Council* [2016] NSWLEC 101, *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1001, provide recent assistance as to the application of Clause 4.6 and some guidance can still be gained from the relevant case law dealing with SEPP 1, where relevant.

As outlined in *Bates Smart Pty Ltd v Council of the City of Sydney* [2014] NSWLEC1001, cl 4.6 of LEP 2012 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development.

The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

### **4. Is the planning control in question a development standard?**

Clause 4.4 provides *inter-alia* that (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

'Development Standards' has the following meaning ascribed to it under Section 4(1) of the Environmental Planning and Assessment Act, 1979:

"development standards" means provisions of an environmental planning instrument in relation to the carrying out of development, being provision by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of -

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;
- (b) the proportion or percentage of the area of a site which a building or work may occupy;
- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;
- (d) the cubic content or floor space of a building;
- (e) the intensity or density of the land, building or work, the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;

- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) drainage;
- (k) the carrying out of earthworks;
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;
- (m) the provisions of services, facilities and amenities demanded by development;
- (n) the emission of pollution and means for its prevention or control or mitigation; and
- (o) such other matters as may be prescribed;”

The Clause relevant in this instance is:

- (c) the character, location, siting, bulk, scale, size, height, density, design or external appearance of a building or work;

On this basis, it is my opinion that Clause 4.4 of the Manly LEP 2013, although referred to as a local standard is a development standard and not a “prohibition” in respect of development, and one amenable to an objection under Clause 4.6. This would be consistent with Council’s intention.

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

*Preston CJ in Wehbe v Pittwater Council [2007] NSWLEC 827 (21 December 2007), sets out 5 ways of establishing that compliance is unreasonable or unnecessary as follows:*

*“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.....*

*43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*

*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.....*

*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.....*

*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.....*



*A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.....*

*However, care needs to be taken not to expand this fifth way of establishing that compliance is unreasonable or unnecessary beyond its limits. It is focused on “particular land” and the circumstances of the case. Compliance with the development standard is unreasonable or unnecessary not because the standard is inappropriate to the zoning, but rather because the zoning of the particular land is found to be unreasonable or inappropriate. If the particular land should not have been included in the particular zone, the standard would not have applied, and the proposed development would not have had to comply with that standard. To require compliance with the standard in these circumstances would be unreasonable or unnecessary.*

*50 However, so expressed, this way is limited. It does not permit of a general inquiry into the appropriateness of the development standard for the zoning. An objection would not be well-founded by an opinion that the development standard is inappropriate in respect of a particular zoning (the consent authority must assume the standard has a purpose).....*

*The requirement that the consent authority form the opinion that granting consent to the development application is consistent with the aims of SEPP 1 as set out in clause 3 (one of which is the promotion and coordination of the orderly and economic use and development of land) makes it relevant “to consider whether consent to the particular development application encourages what may be summarised as considered and planned development” or conversely may hinder a strategic approach to planning and development.”*

*Set out below is an analysis of the standard, having regard to the principles enunciated in both the Winten and Wehbe judgements as applicable:*

**Comments:**

*The existing building is a longstanding development on the North Steyne promenade, reflecting Council’s desired character for the area as promoted in the Manly LEP 2013 which prescribes a maximum FSR of 1.5:1 and a maximum height limit of 13m for the area. The building complies with the height limit for the site.*

*The existing FSR is acknowledged by Council’s staff as non-compliant, however the building is deemed acceptable and is supported in its current context in relation to its bulk, scale and general appearance.*

*The site has a prominent corner location, three road frontages and frontage to the tourist hub of North Steyne promenade. These site characteristics create the opportunity to have a visually attractive building that essentially ‘hugs the corners’ of the street and optimises outlooks towards the beach. Council has accepted this premise for this site in the past. It is purported that this has not changed and the overall development should be assessed more in terms of the outcomes of its street appeal and context than compliance with a numerical standard (in this particular case). The building is directly opposite the substantial and imposing heritage listed North Steyne Surf Club. The subject site, known as Bella Vista Apartments, is a complementary landuse to the surf club as well as the North Steyne beachfront.*

*It is impossible to restrict the existing building to strict compliance with the prescribed numerical FSR in this case as the development already breaches the development standard. The change in the percentage of non-compliance and impact of the*

additional floor area on the overall bulk, scale and streets appeal and appearance of the building is a more reasonable assessment of the variation. The percentage variation is 6.7% gfa, dispersed across five (5) habitable floor levels, equating to average of less than 40sqm per floor level. Further, the majority of this additional floor result from incremental increases required to 'straighten' the front elevation of the building, aligning it in parallel to the front property boundary. In relation to the overall size and design of the building, the change in gross floor area is negligible.

The building does not draw attention to itself beyond that reasonably expected on this corner site. It remains in context with the approved height, bulk and scale of surrounding built form. Further it remains respectful of the North Steyne Surf Life Saving Club at the end of Pine Street. There is no attempt to emulate the design, colours or materials of the surf club, rather the proposed works to the apartments provide a modern, vibrant street appearance that is complementary to the surf club.

The increased gross floor area does not result in any additional overshadowing of private or public property. Being a corner site, located on the north-western corner with the majority of the floor space additions located on the eastern elevation, there are no shadowing impacts.

In terms of view sharing, the front setbacks continue to allow view sharing across boundaries. The property to the north of the subject site have their primary balcony views to the east – towards the beach. However, due to wrap-around corner balconies there are some secondary outlooks to the southeast.

The proposed extension of the north-east corners of the habitable levels of the building move the external corner of the building out to create a squarer, crisper edge and return to the building. A minor loss of view may result, however, this is considered acceptable given the range of view lines and outlooks retained by the neighbouring units.

**6. Are there are sufficient environmental planning grounds to justify contravening the development standard.**

The proposal is consistent with the established height, bulk and scale of development within the immediate vicinity.

Strict application of the current FSR of the building would prevent achievement of the proposed update and improvements to the building which are considered to outweigh the application of the numerical standard in this instance.

The increased floor area of the building does not result in any significant adverse impacts. The upgrades and improvements to the onsite private open space, amenity for residents, opportunities for increased passive surveillance of the street and public realm from the larger balconies and modernization of the building appearance is a considered a positive for the wider community, both socially and economically.

New, refreshed and updated buildings in prominent tourist locations are generally interrupted as a positive economic environment and dynamic place to be, hence drawing on the national and international attraction of the Manly beachfront area.

**7. Is it consistent with the objectives of the standard and objectives for the zone?**

The Land and Environments Courts recent position in considering consistency with objectives, is the adoption of *Pearlman J in Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21 where, Her Honor expresses the following opinion [at 27]:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show

*that the development promotes or is ancillary to those objectives, not even that it is compatible.*

*The objectives of the FSR standard are:*

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

**Comments:**

- The proposed building is consistent with the prevailing established and likely future character of buildings and heights in the immediate locality.*
- The bulk and scale of the development has been appropriately managed by accepted design techniques including variation to texture, materials and colours.*
- The height of the building, the other half of the tool adopted by Council to control bulk and scale, is complied with;*
- The increase in FSR does not have a significant impact on views to the beach from nearby residential development.*
- Views between the streets and the beach are not significantly affected by the proposal.*
- Solar access to public open spaces and adequate sunlight access to private open spaces and to habitable rooms is maintained.*

*The objectives of the R3 zone are:*

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**Comments:**

*The existing building caters for temporary residential accommodation, rather than permanent full-time rentals and/or owner-occupiers. This provides a significant service to the tourist market that visits Manly on an annual basis. The proposed works aim at updating and revitalizing the building in line with current trends that seek good quality indoor-outdoor recreation and entertainment areas, clean crisp architectural lines and a squarer more contemporary appearance of elements and features of buildings. This will further enhance the ongoing role of Manly in the provision of tourist accommodation to national and international visitors. Longer term (up to 3 month) stays are accommodated onsite adding variety and diversity to the accommodation offered. There is no overall change to the number of units or bedrooms within the complex.*

## **8. Conclusion**

*The breach of the development standard does not raise any matter of significance (other than a positive one) for the proposal and surrounding properties, nor is it contrary to the public interest or raise any matter which would be of State or Regional Significance other than as discussed above. In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.*

*As detailed above, there are sufficient environmental planning grounds to justify the contravention of the FSR development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the North Steyne foreshore area.*

*Whilst the existing and proposed non-compliance with the numerical FSR standard is acknowledged, the development is compatible and consistent with the likely future bulk, scale and form of adjoining and surrounding developments within the locality, and the variation will be well absorbed within the context of the approved and surrounding built form and not be readily perceptible. There is no reasonable argument as to why strict application of the FSR standard should be applied for the subject site and the development given the circumstances outlined.*

*The breach of the development standard does not cause any significantly detrimental impacts to surrounding properties which in isolation would warrant strict adherence to the current, non-conforming*

*FSR. The proposal is in the public interest and the proposal form is commensurate with that of adjoining and surrounding residential developments. Whilst the proposed breach may be considered numerically significant (being over 10%), the additional floor area is contained within the existing overall footprint of the existing building.*

*In the circumstances, concurrence to the objection would not be contrary to the public interest, but rather the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.*

*As detailed above, there are sufficient environmental planning grounds to justify contravening the development standard, as it would still allow for the orderly and economic development of residential land whilst maintaining the existing local character and desired future character of the area. The additions and alterations do not result in an inconsistent built form in this particular part of the locality given the number of three, four and six storey developments in close proximity to the property.*

*Critically, the additional gross floor area does not block any existing available public or private views towards North Steyne beach and nor does it result in overshadowing impacts to western or southern adjoining neighbours (over and above any existing impacts).As the above submission demonstrates that:*

- compliance with the development standard are unreasonable or unnecessary in the circumstances of the case; and*
- there are sufficient environmental planning grounds to justify contravening the development standard; and*
- the matters required to be demonstrated by 4.6(3) have been addressed;*
- the proposed development will be in the public interest because it is consistent with the*

- *objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, The variation to the standard is worthy of support, which is fundamental to the approval of the development application."*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. The proposed variation is greater than 10%, is consistent with the objectives of the zone and therefore is required to be determined by the Northern Beaches Local Planning Panel.

## Part 5 Miscellaneous Provisions

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

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

## Part 6 Local Provisions

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

6.	Local Provisions	Applies	Complies	Comment
6.4	Stormwater Management	Yes	Yes	The proposed development is consistent with the objectives and controls of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed development is consistent with the objectives and controls of Clause 6.9 of the Manly LEP 2013.

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

There is no applicable Draft Planning Instrument.

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

#### Manly Development Control Plan 2013

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

#### Part 3 General Principles of Development

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

#### Comment:

##### 3.1 Streetscapes and Townscapes

###### Streetscape

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

The proposed development retains a front setback of 4m, consistent with the existing building line along North Steyne, thereby reducing the visual impact of walls along the main street frontage. The proposed development does not alter the existing fencing along the main street frontage. The existing car parking arrangement (entry via the rear lane) remains unchanged by the proposed development.

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

The proposed development complements the existing streetscape character, as the street contains a number of residential flat buildings of comparable or greater scale.

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

No changes are proposed to the existing front fence or the existing landscaped area along the main street frontages of the site.

##### 3.2 Heritage Considerations

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

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

The subject site is not heritage listed. The proposed development is within the vicinity of heritage-listed Item 2 Stone Kerbs and Item 174 Beach Reserve—Merrett Park North Steyne and South Steyne. The proposed development is consistent with and complements the existing streetscape character, as the street contains a number of residential flat buildings of comparable or greater scale. The proposed development does not impact upon the heritage-listed stone kerbs. As such, the proposed development does not unreasonably impact upon the heritage significance of the nearby heritage-listed items.

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

Not applicable. The subject site is not a heritage item (or a potential heritage item), does not alter a heritage item and is not within a heritage conservation area.

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

The proposed development is of an appropriate form and design so that it does not unreasonably impact upon the significance of the nearby heritage items.

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

Not applicable. The proposed = development does not involve infrastructure.

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

Not applicable. The subject site is not a heritage item (or a potential heritage item), does not alter a heritage item and is not within a heritage conservation area.

#### 3.4.1 Sunlight Access and Overshadowing

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

The proposal provides equitable access to light and sunshine in that the development involves external of a reasonably minor nature, and does not eliminate more than one third of the sunlight available to existing surrounding developments. The additional overshadowing resulting from the development predominantly falls to the street, rather than to adjacent or nearby properties.

*Objective 2) To allow adequate sunlight to penetrate:*

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

As above, the additional shadow resulting from the proposed development predominantly falls to the street, rather than to adjacent or nearby properties. The proposed additional shadow does not unreasonably impact upon sunlight access to the private open spaces and windows of adjacent and nearby properties.

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

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

The proposed development retains an adequate level of building modulation with the retention of balcony and terrace spaces. The proposal generally retains existing setbacks.

### 3.4.2 Privacy and Security

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

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

The proposed development minimises the loss of privacy to adjacent and nearby development with the inclusion of privacy screening, particularly to the terrace and balcony spaces that are orientated to adjacent or nearby dwellings in order to prevent overlooking. Further, the dimensions of the balcony and terrace spaces that are orientated to adjacent or nearby properties are generally unchanged from the existing development and therefore do not increase their usability. In these ways, the proposed development is appropriately designed for privacy and mitigates direct viewing between properties.

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

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

*Objective 3) To encourage awareness of neighbourhood security.*

The proposed development retains and extends balcony spaces along the two main street frontages of the site (North Steyne and Pine Street), thereby encouraging neighbourhood security through passive surveillance.

### 3.4.3 Maintenance of Views

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

The proposed development allows for view sharing for residents of the existing adjacent buildings and the proposed building in that the existing height is retained and the existing setbacks are generally retained. As such, the existing building envelope is generally retained. Setbacks that are altered do not lead to unreasonable view loss.

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

As above, the existing building envelope is generally retained. As such, the proposed development does not result in unreasonable view loss to and from public spaces.

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

Given the existing building envelope is generally retained, the proposed development does not result in unreasonable view loss or view creep.



## Part 4 - Development Controls

Site Area:	1,335m <sup>2</sup>	<b>Permitted/ Required</b>	<b>Proposed</b>	<b>Complies Yes/No</b>
Wall height	North side	12m	14.25m	Yes – Existing
	South side	12m	14.25m	Yes – Existing
Number of Storeys		3	5	Yes – Existing
Roof height		2.5m	Flat roof	Yes
Setback Front		6.0m or streetscape	500mm-4m	Yes – Consistent with streetscape
North setback side – Ground Floor		1/3 wall height (1.09m)	0-4.9m	Yes – Existing
North setback side – First Floor		1/3 wall height (2m)	0-2.27m	Yes – Existing
North setback side – Second Floor		1/3 wall height (2.86m)	0-2.27m	Yes – Existing
North setback side – Third Floor		1/3 wall height (3.86m)	0-2.27m	Yes – Existing
North setback side – Fourth Floor		1/3 wall height (4.75m)	6-7m	Yes
South setback side – Ground Floor		1/3 wall height (1.09m)	364mm-2.6m	Yes – Existing
South setback side – First Floor		1/3 wall height (2m)	400mm-2.1m	Yes – Existing
South setback side – Second Floor		1/3 wall height (2.86m)	400mm-2.1m	Yes – Existing
South setback side – Third Floor		1/3 wall height (3.86m)	400mm-2.1m	Yes – Existing
South setback side – Fourth Floor		1/3 wall height (4.75m)	550mm-2.175m	No. See comment below.
Setback Rear		8.0m	0-3.25m	Yes – Existing
Open space - total		Min. 45% of Site Area (600.75m <sup>2</sup> )	88% (1,175.5m <sup>2</sup> )	Yes
Open space - landscaped		Min. 25% of Total Open Space (293.87m <sup>2</sup> )	4.7% (55m <sup>2</sup> )	Yes – Existing
Open space - above ground		Max. 40% of Total Open Space (470.2m <sup>2</sup> )	71.7% (843.3m <sup>2</sup> )	No. See comment below.
Private Open Space	12m <sup>2</sup> per dwelling		Units 2-4, 6-10 and 12-22: >12m <sup>2</sup>	Yes
			Units 1,5 & 11: <12m <sup>2</sup>	No. See comment below.

### Comment:

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

Clause 4.1.4.2 of the MDCP 2013 requires that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed development seeks non-compliant southern side setback of between 550mm-2.175m (4.75m required).

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

The proposed non-compliant side setback is consistent with and complementary to existing and recently approved developments along the streetscape. As such, the desired spatial proportions of the street, the street edge and the landscape character of the street are maintained.

*Objective 2) To ensure and enhance local amenity by:*

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

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

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

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

*Objective 4) To enhance and maintain natural features by:*

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

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. This is detailed further in the section of this report relating to Part 4 of the Manly DCP 2013 – Development Controls – Open Space and Landscaping. The subject site does not contain urban bushland.

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

The subject site is not within an area of bushfire prone land.

#### 4.1.5 Open Space and Landscaping

Clause 4.1.5.1 of the MDCP 2013 requires that the subject site provide a maximum of 40% of the total open space as open space above ground. The proposed development incorporates 843.3sqm of open space above ground, equating to 71.7% of the total open space.

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

The subject site is level and is currently predominantly built upon or paved. The existing landscaped area remains unchanged by the proposed development. As such, the proposed development does not unreasonably impact upon important landscape features that exist on site.

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

As above, the subject site is level and is currently predominantly built upon or paved. The existing landscaped area remains unchanged by the proposed development.

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

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

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

As above, the open space currently available on the subject site is predominantly hard and impervious. The proposed development does not impact upon existing landscaped open space, thereby retaining the existing level of water infiltration on site.

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

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

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

The proposed development provides adequate landscaped spaces for wildlife habitat and corridors.

## **Part 5 - Special Character Areas and Sites**

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

### **Comment:**

The proposed development is consistent with the Special Character Areas and Sites objectives and provisions in relation to the Foreshore Scenic Protection Area. The proposed development shall have minimal impact on the visual aesthetic amenity of the area.

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

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

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

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

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

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

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

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

The proposed development is suitable for the site.

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

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with no submissions received.

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

The proposed development is in the public interest.

**S94 Contribution towards provision or improvement of amenities or services**

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

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

**Comments:**

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

**CONCLUSION:**

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

**RECOMMENDATION**

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standards contained in Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. 272/2017 for alterations and additions to an existing Residential Flat Building at 96 North Steyne, Manly be **Approved** subject to the following conditions:-

**GENERAL CONDITIONS**

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

*Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 272/2017:*

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA0010 Site Plan & Analysis	Issue A 21 Nov. 2017	Squillace Architects
DA1002 Basement Floor Plan	Issue A 21 Nov. 2017	Squillace Architects
DA1003 Demolition / Proposed Ground Floor Plan	Issue A 21 Nov. 2017	Squillace Architects

DA1004 Demolition / Proposed Levels 1 and 2 Floor Plan	Issue A 21 Nov. 2017	Squillace Architects
DA1005 Demolition / Proposed Level 3 Floor Plan	Issue B 6 February 2018	Squillace Architects
DA1006 Demolition / Proposed Level 4 Plan	Issue A 21 Nov. 2017	Squillace Architects
DA1007 Demolition / Proposed Roof Plan	Issue A 21 Nov. 2017	Squillace Architects
DA2000 Proposed Elevations West & North	Issue A 21 Nov. 2017	Squillace Architects
DA2001 Proposed Elevations East & South	Issue A 21 Nov. 2017	Squillace Architects
DA3000 Building Section AA	Issue A 21 Nov. 2017	Squillace Architects

*Reference Documentation relating to Development Consent No. 272/2017:*

- BASIX Certificate No. 880579M prepared by Outsource Ideas P/L
- Accessibility Assessment Report prepared by City Plan Services dated 27 November 2017
- Certificate of Compliance prepared by Better Fire Protection Pty Ltd dated 13 September 2017

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

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

## 2. Prescribed Conditions

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

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out

unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative Requirement (DACPLB09)

## **GENERAL CONDITIONS RELATING TO APPROVAL**

### **ANS01**

Erosion and Sediment controls must be installed in accordance with the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1 (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed.

Reason: To protect the surrounding environment and waterways from the effects of sedimentation and erosion from the site.

### **1A (1AP04)**

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

Reason: To ensure compliance with the approved development.

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

### **ANS02**

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

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

### ANS03

Stormwater shall be disposed of to an existing approved system or in accordance with Council's Manly Specification for on-site Stormwater Management. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

### ANS04

A Construction Management Program shall be prepared which includes the following:

- (a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) The proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- (c) Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

### 2A (2CD01)

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

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

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

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

### 3 (2CD05)

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

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

4 (2CD07)

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

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

5 (2DS01)

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

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

6 (2MS01)

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

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

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

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

7 (2WM02)

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

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

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

## **CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT**

8 (3CD01)

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

Reason: To ensure compliance with statutory provisions.



9 (3CD02)

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

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

10 (3CD03)

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

Reason: To protect the public interest and safety.

11 (3LD01)

All healthy trees and shrubs identified for retention on the submitted landscape drawing are to be suitably marked for protection before any construction works start.

Reason: To ensure the trees conditioned to stay on the site are suitably protected during any construction works.

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

### **ANS05**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations. Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the beach zone or ocean.

Reason: To ensure that building associated material/waste and pollution does not mobilise into the adjacent beach.

12 (4AP02)

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

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

13 (4CD01)

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

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

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

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

#### 14 (4CD02)

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

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

Reason: To prevent disturbance to the surrounding community.

#### 15 (4CD03)

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

Reason: To maintain sanitary conditions on building sites.

16 (4LD02)

All healthy trees and shrubs identified for retention on the drawing are to be:

- (a) suitably protected from damage during the construction process, and
- (b) retained unless their removal has been approved by Council.

Reason: This is to ensure that the trees on the site which do not have approval to be removed on the site are suitably protected during any construction works.

Internal Note: This condition is to be imposed with 3LD01.

17 (4LD03)

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree/s unless in conformity with this approval or subsequent approval is prohibited.

Reason: To prohibit the unnecessary damage or removal of trees without permission from Council during any construction.

18 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

19 (4MS04)

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

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

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

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

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

### **ANS06**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a chartered professional engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

## **ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT**

20 (6MS02)

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

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