

STATEMENT OF ENVIRONMENTAL EFFECTS

173 SEAFORTH CRESCENT, SEAFORTH

**CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO
AN EXISTING DWELLING**

**PREPARED ON BEHALF OF
Mr Titus Theseira**

JANUARY 2020

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1. INTRODUCTION

This application seeks approval for the construction of alterations and additions to an existing dwelling on Lot 1 in DP 555814 which is known as **No. 173 Seaforth Crescent, Seaforth**.

In preparation of this development application consideration has been given to the following:

- Environmental Planning & Assessment Act, 1979.
- Manly Local Environmental Plan 2013.
- Manly Development Control Plan 2013.

The following details and documents have been relied upon in the preparation of this document:

- Survey Plan prepared by True North Surveys, Job Ref: 8479 and dated 27/012/2017.
- Architectural Plans prepared by Jay N Design, Project No. 2017-P003, dated 11.12.19, Issue J.
- BASIX Certificate.
- Bushfire Hazard Assessment prepared by Bushfire Planning & Design, Issue A and dated 14/08/2018.

This Statement describes the subject site and the surrounding area, together with the relevant planning controls and policies relating to the site and the type of development proposed. It provides an assessment of the proposed development against the heads of consideration as set out in Section 4.15 of the Environmental Planning and Assessment Act 1979. As a result of that assessment it is concluded that the development of the site in the manner proposed is considered to be acceptable and is worthy of the support of the Council.

3. SITE DESCRIPTION AND LOCALITY

The site is identified as Lot 1 in DP 555814 which is known as No. 173 Seaforth Crescent, Seaforth. The site is a battle axed shaped allotment, located on the northern side of Seaforth Crescent with a street frontage of 16.46m and an access handle extending to the water frontage. The site has an area of 888.5m² with the sites eastern boundary having a length of 37.795m. The locality is depicted in the following map:



Site Location Map

The property has a steep slope from the street frontage to the northeast towards Middle Harbour. The levels across the site proper range from RL37.83 to RL25.35. The site currently comprises a three storey rendered brick dwelling with tiled roof. The dwelling is located centrally on site with a swimming pool in the rear yard. An inclinator adjacent to the western boundary provides access from street level the waterway.

A carport is located towards the front southern corner of the site. This carport is located within a right of way and it is utilised by No. 173A and 175 Seaforth Crescent.

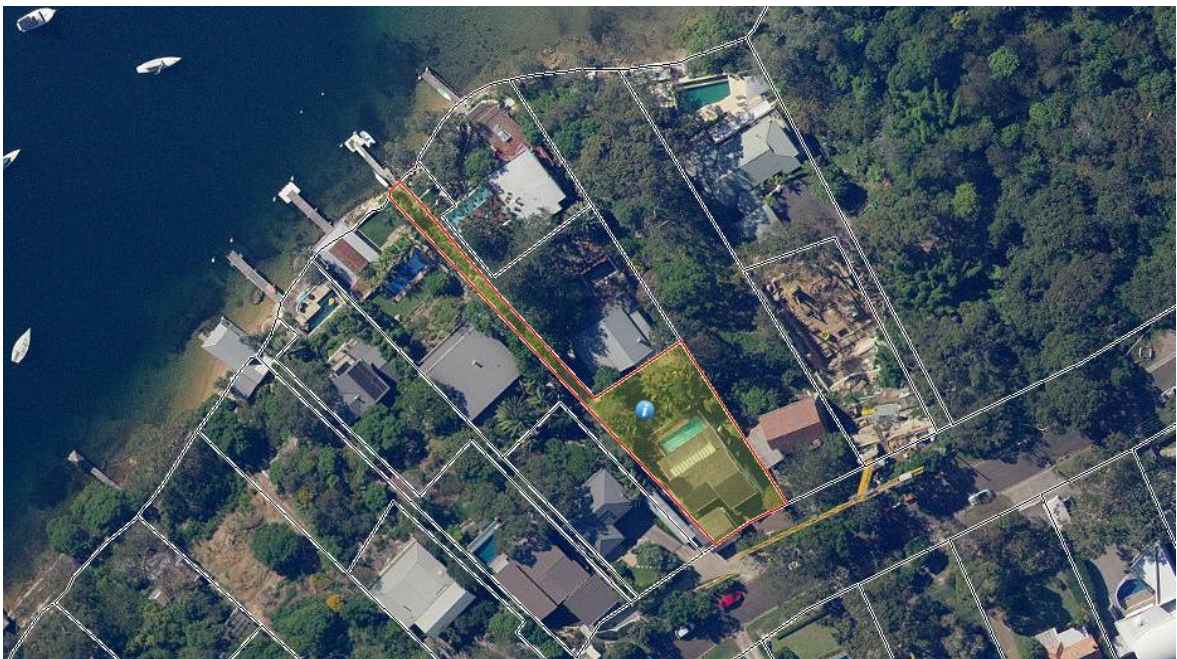
The site is characterised by informal gardens and does not comprise any significant vegetation. There are two trees located on the road reserve adjacent to Seaforth Crescent.

The site is depicted in the following photographs:



View of the site from Seaforth Crescent

The existing surrounding development comprises predominantly multi storey dwellings designed and orientated to maximise views of Middle Harbour on a variety of allotment size. The existing surrounding development is depicted in the following aerial photograph:



Aerial Photograph of Locality

4. THE DEVELOPMENT PROPOSAL

This proposal seeks approval for the construction of alterations and additions to the existing dwelling. The proposed additions will be constructed of rendered external walls and a pitched tiled roof to match the existing dwelling. A new pool is also proposed to replace the existing pool.

The proposal provides for a new garage and formal entry to be provided to the upper (first floor) level. The garage is provided with setbacks to the street frontage ranging from 4.354m (southwest corner) to 4.563m (southeast corner). The additions to this level are setback 1.927m from the eastern side boundary. A new covered walkway and entry porch is also provided. New stairs are provided adjacent to the eastern boundary to provide access from the front boundary to the lower level terrace and entry. This stair is setback 1.0m from the eastern boundary. The existing garage is to be converted to an open style terrace area with store under given the difficulty in vehicles accessing this area. A new driveway will provide access from Seaforth Crescent to the new garage. The driveway will be constructed in accordance with the Arborist recommendations to ensure retention of existing street trees. The existing garage will be demolished.

Additions are proposed to the lower level 1 to provide additions to the rear. This level provides bedrooms, gym and courtyard.

A new lower level 2 is proposed as an addition to the rear of the dwelling. This level provides for setbacks of at least 3.185m to the western side boundary and the wall of the dwelling setback 6.0m from the rear boundary.

The existing pool and associated terrace will be demolished and a new swimming pool and garden terrace is proposed. The swimming pool is proposed to be setback 3.0m to the rear boundary. The rear northern elevation of the pool is provided with a wet edge and does not have any accessible coping.

All collected stormwater will be directed to the existing stormwater system which discharges into the existing pipe which disperses to middle harbour.

The proposed additions will result in the following:

Entry Level (First Floor):	Entry, foyer, two bedrooms, bathroom and double garage.
Ground Floor:	Kitchen, dining bathroom, lounge room, laundry and terrace.
Lower Floor:	Two bedrooms (main with ensuite), bathroom, gym and storage.
Lower Floor 2:	Library/gallery, rumpus room, study, shower room and pool with garden.

The proposal will result in the following numerical indices:

Site Area:	888.5m²
Proposed FSR:	352.34m² or 0.396:1
Total Open Space:	280m² or 32%
Landscaped Space:	105m² or 19.1% of the required total open space.

5 ZONING & DEVELOPMENT CONTROLS

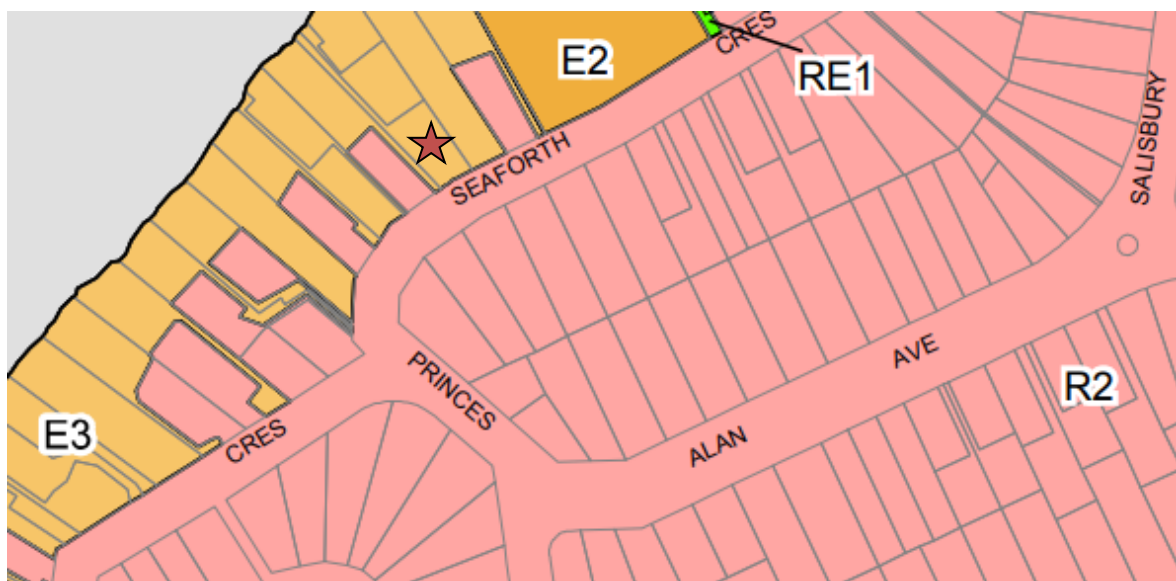
The proposed development is identified as development requiring the consent of the Council under the provisions of the Environmental Planning and Assessment Act 1979, as amended. The following is an assessment of the proposal against the relevant provisions of the Act and all of the relevant planning instruments and policies of Manly Council.

5.1 Planning for Bushfire Protection 2006

The subject site is identified as bushfire prone land on Council's Bushfire Prone Land Map and therefore the provisions of Planning for Bushfire Protection 2006 apply to the proposed development. A Bushfire Risk Assessment has been prepared by Bushfire Planning & Design which in summary provides:

Based on the above report and with the implementation of the recommendation contained within this report the consent authority should determine that this development can comply with the requirements of AS 3959-2009 and 'Planning for Bushfire Protection' guidelines.

5.2 Manly Local Environmental 2013



Extract of Zoning Map

The subject site is zoned E3 Environmental Management. The objectives of the E3 Zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

It is considered that the proposed development achieves these objectives by:

- Providing additions/alterations to an existing dwelling which is permissible in this zone.
- The proposed works are generally contained over the existing hard surfaces or building footprint.
- The works do not require the removal of any significant vegetation.
- The proposed additions do not extend above the height of the ridge height of the existing dwelling.
- The proposal is well separated from the foreshore and will be predominantly obscured from the foreshore by the existing surrounding development and vegetation.
- Ensuring all vegetation is directed to the existing stormwater pipe which disperses to Middle Harbour.
- When viewed from the street, the proposal will continue to present as a single level dwelling. The dwelling steps down the site. The proposal does not result in unreasonable bulk or scale.

Dwelling alterations and additions are permissible use in the E3 Environmental Management zone with the consent of Council.

The following numerical standards are applicable to the proposed development:

Clause	Development Standard	Proposal	Compliance
Clause 4.3 Height	8.5m	10.53m	Clause 4.6 included in Appendix C.
Clause 4.3A Special Height Provisions	Not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot. RL38.83	RL41.46	Clause 4.6 included in Appendix B.

Clause	Development Standard	Proposal	Compliance
Clause 4.4 Floor Space Ratio	0.4:1	352.34m ² or 0.396:1	Yes

There are no other specific clauses that specifically relate to the proposed development.

4.3 Manly Residential Development Control Plan 2013

The Manly DCP 2013 applies to all land where the LEP applies. Therefore, the DCP applies to the subject development.

Part 3

Part 3 provides general principles applying to all development and Part 4 outlines development controls for specific forms of development including residential. The relevant provisions of **Part 3** are summarised below:

Clause 3.1.1 – Streetscape (Residential Areas)

The site is located on the low side of Seaforth Crescent. The proposed additions will present as a single storey dwelling when viewed from the street. The proposal incorporates a new garage to ensure parking for the dwelling is accessible and meets the requirements of the current standards. The resultant dwelling is of an appropriate bulk and scale when viewed from Seaforth Crescent. In this regard the dwelling will continue to present as a part two and part three storey dwelling with the bulk of the additions located at the rear of the site. The proposed additions do not extend above the height of the existing dwelling. The new driveway has been designed to retain the existing street trees to ensure minimal impact on the landscaped setting and character of the locality.

Clause 3.3 - Landscaping

The works do not require the removal of any protected vegetation. An arborist report has been prepared and the new driveway has been designed to ensure retention of the existing street trees in accordance with this report.

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

The objectives of the clause are noted as:

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

It is suggested that the works will achieve these objectives as:

- The proposal provides for additions to the existing dwelling. The new two storey component is located at the rear of the dwelling and does not extend above the height of the existing dwelling ridge height. The proposal provides for articulation along all boundaries to minimise bulk and scale.
- The materials and finishes are compatible with the existing surrounding development and will not detract from the character of the locality.
- The proposed additions will maintain an appropriate level of privacy to the surrounding properties. This has been achieved through minimal window/door openings on the side elevations and appropriate boundary setbacks. The dwelling is orientated to maximise water views and generally looks over the adjoining northern dwelling, No. 173A Seaforth Crescent. It is noted that there are no direct views from the proposed additions into living areas or principal private space of No. 173A Seaforth Crescent.
- The proposal does not obstruct any significant views. The additions do not extend above the height of the existing ridge and with the topography of the site falling steeply from the street the views from those properties on the opposite side of Seaforth Crescent will not be affected. The two adjoining properties to the east and west will continue to enjoy significant water views. This has been achieved through appropriate boundary setbacks.

Clause 3.5 - Sustainability

A BASIX Certificate has been submitted with the application.

Clause 3.7 - Stormwater Management

All collected stormwater will continue to be connected to the existing system which discharges to Middle Harbour in accordance with Council controls.

Part 4

The following numerical provisions of **Part 4** are considered relevant to the proposal:

Clause/ Design Element	DCP Requirement	Compliance/Comments
Residential Density & Subdivision	Density Area D9 – 1 dwelling per 1,150m ²	Whilst the site has an area of only 888.5m ² , the proposal does not increase residential density nor propose subdivision.
Floor Space Ratio	Refer to LEP 0.4:1	Yes Proposed FSR is 0.396:1 which complies with the LEP.

Clause/ Design Element	DCP Requirement	Compliance/Comments
Wall Height	Height – 8.0m	The proposal exceeds the maximum wall height control. The justification for such a non-compliance is detailed in the Clause 4.6 variation (maximum height) in Appendix B.
Number of Storeys	Two Storeys	The proposal is generally two storeys with some smaller three storey portions. This is compatible with the existing surrounding development which provides for multi storey dwellings.
Roof Height	2.5m above wall height	Yes
Parapet Height: 600mm above wall height.	600mm above wall height	Not applicable
Maximum Roof Pitch	35°	Yes
Building Setbacks	Front Setback – Min. 6.0 metres or consistent with neighbouring.	<p>The proposal provides for a new garage forward of the main dwelling. However it is considered appropriate in this instance for the following reasons:</p> <ul style="list-style-type: none"> • The existing garage is accessed via a significantly sloped driveway that does not achieve current access standards. • There is no alternative to providing a garage with an accessible driveway. • The garage is single level and is well integrated into the dwelling design. • The site falls from the street and the garage will not be dominant in the streetscape. • The garage has been designed to retain existing vegetation in the road reserve.

Clause/ Design Element	DCP Requirement	Compliance/Comments
	<p>Secondary setback – same as side boundary setback</p> <p>Side Setback – 1/3 of the height of wall.</p> <p>Walls without windows may be constructed to one side boundary only, providing the objectives of this part can be met and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.</p>	<ul style="list-style-type: none"> The garage will not detract from the streetscape with varied setbacks in this part of Seaforth Crescent. <p>Not Applicable</p> <p>The setbacks as proposed are considered appropriate in this instance for the following reasons:</p> <ul style="list-style-type: none"> All elevations of the dwelling are well articulated and provide for modulation and varied setbacks. The additions maintain sufficient separation between the adjoining built form. The additions have been designed to be orientated towards the northwest to maximise water views and maintain privacy. The proposed additions result in only minimal additional overshadowing. All adjoining properties continue to receive 3 hours solar access to living areas and private open space on the winter solstice. <p>Not Applicable</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	Rear Setback – Minimum 8.0 metres	Yes. The rear wall of the dwelling is setback 8.0m from the rear boundary.
Landscaping/Open Space	<p>Open Space Area 4: Minimum total open space: 60% of site area.</p> <p>Minimum soft open space as % of total open space: 40%</p> <p>Minimum number of endemic trees: 4</p>	<p>The proposal provides for 280m² or 32% of the site for open space.</p> <p>The proposal provides for 105m² of soft open space or 19.1% of the 'required' total open space. Whilst the proposal does not strictly comply with Council controls it is considered appropriate in this instance for the following reasons:</p> <ul style="list-style-type: none"> • A landscape plan has been prepared to improve the landscaped character of the site. This includes boundary planting and larger species. • The existing rear yard will be improved by the proposed detailed landscaping and removal of several exempt vegetation species. • The proposal provides for at least 3m setback to the rear boundary from the pool which is sufficient for landscaping. • A new landscaped garden area with planter around will also provide for a more usable garden area that will not impinge on the privacy of the adjoining properties. <p>The proposal does not require the removal of any protected trees.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
	<p>Private open space to be directly accessible from living areas. Minimum dimension 3m. Minimum area of 18m².</p>	<p>Yes The proposal retains ample private open space in the rear yard. The new terrace area and reconfiguration of rooms will improve outdoor living and direct connection to private open space.</p>
Parking and Access	<p>Minimum 2 Spaces per Dwelling.</p> <p>Garages/carports shall be sited so as to not dominate the street frontage through the use of appropriate materials.</p> <p>Carports forward of the building line shall be open on all sides. Maximum width of structures forward of the building line is 6.2m or 50% of site width whichever is the greater.</p>	<p>The current parking for the subject dwelling is within a lower level garage. Access is difficult and non-compliant with current controls. The proposal provides for a new garage with a setback consistent with the existing structure and compatible in the streetscape. The garage is constructed of appropriate materials and will not be dominant in the streetscape. This has been discussed in detail in response to Street Setbacks.</p>
First Floor Additions	<p>Additions may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.</p> <p>Must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences</p>	<p>Yes The proposal provides for the first floor to be provided with appropriate setbacks to all boundaries. The resultant dwelling is appropriate articulated and is provided with sufficient separation to the adjoining built form. This report demonstrates there is no unreasonable loss of views, privacy or solar access.</p> <p>The proposal will present as a single storey dwelling when viewed from Seaforth Crescent. The proposed works do not exceed the height of the existing ridge.</p>

Clause/ Design Element	DCP Requirement	Compliance/Comments
Fences	Maximum height 1.0m for solid Maximum height 1.5m where at least 30% is transparent.	Not Applicable
Swimming Pools	Max 1m above ground or provide increased setback	The proposal is setback 3m from the rear boundary to compensate for the additional height above ground level. Further the rear (north) elevation of the pool is provided with an overflow/wet edge with no accessible coping. The setback in conjunction with pool design and proposed landscaping will ensure that privacy to the adjoining properties is maintained.
	Locate in rear yard	Pool is located in rear yard.
	1m from side and rear boundaries.	Yes Setback 3m from rear boundary.

There are no other provisions of the Manly DCP that apply to the proposed development.

6. EP & A ACT - SECTION 4.15

The Provisions of any Environmental Planning Instruments

The proposal is subject to the provisions of the Manly Local Environmental Plan 2013 and the Manly DCP 2013. It is considered that the provisions of these documents have been satisfactorily addressed within this report.

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

The Likely Impacts of the Development

It is considered that the development will provide for additions to an existing dwelling without detrimentally impacting on the character of the area. The proposal does not result in the removal of any vegetation protected by Council's Tree Preservation Order. The design of the proposal is such that they do not result in any unreasonable loss of privacy.

The Suitability of the Site for the Development

The subject site is zoned E4 Environmental Management and the construction of alterations and additions to an existing dwelling house is permissible with the consent of Council. The resultant development is of a bulk and scale that is consistent with existing surrounding developments. The proposal does not result in the removal of any significant vegetation.

For these reasons it is considered that the site is suitable for the proposed development.

The Public Interest

It is considered that the proposal is in the public interest in that it will provide for an upgrade of the existing dwelling and is consistent with other development in this locality without unreasonably impacting the amenity of the adjoining properties or the public domain.

7. CONCLUSION

This application seeks approval for the construction of alterations and additions to an existing dwelling. As demonstrated in this report the proposal is consistent with the aims and objectives of the Manly Local Environmental Plan 2013 and the Manly DCP 2013. The proposal does not have any detrimental impact on the amenity of the adjoining properties or the character of the locality.

It is therefore considered that the proposed of alterations/additions to an existing dwelling upon land at **No. 173 Seaforth Crescent, Seaforth** is worthy of the consent of Council.

Natalie Nolan
Grad Dip (Urban & Regional Planning) Ba App Sci (Env Health)
Nolan Planning Consultants
January 2020

APPENDIX A – LOCALITY ANALYSIS

The Seaforth Crescent locality is characterised by a mixture of architectural design with the majority of dwellings being 2-3 storeys. Dwellings are orientated and design to maximise water views to the northeast.

The roof form in this area is a predominantly traditional pitched roof forms of both metal and tiled materials with a more recent emergence of flat roofs. Dwellings are constructed of a mixture of rendered and face brickwork and some cladding.

A number of properties comprise parking structures forward of the building line and this is mainly a result of the topography and inability to provide parking elsewhere on site.

The proposed development has been designed to complement the existing locality. The proposed works do not extend above existing ridge height and the dwelling continues to present as a single level dwelling when viewed from Seaforth Crescent. The design of the proposal in response to the locality and the site's constraints and opportunities and this is demonstrated in the Statement of Environmental Effects.

APPENDIX B

OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3A (SPECIAL HEIGHT PROVISIONS) OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For: Dwelling Additions/Alterations
At: 173 Seaforth Crescent, Seaforth
Owner: Titus Theseira
Applicant: Titus Theseira

1.0 Introduction

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

2.0 Background

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

The *Height of Building Map* identifies the site as being within ‘Special Height Provisions’ with Clause 4.3A stating:

- (2) *Despite clause 4.3 (2), the height of a building on a lot identified as “Special height provisions” on the [Height of Buildings Map](#) must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*

This clause is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot is RL38.83. The proposed additions provide for a maximum height of RL41.46 which do not comply with the numerical standards of this clause.

3.0 Purpose of Clause 4.6

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

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling development which is consistent with the stated Objectives of the E3 Environmental Management, which are noted as:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing single detached dwelling which is sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

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

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

6.0 Justification of Proposed Variation

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

Paragraph 27 of the judgement states:

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

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

Precondition 1 - Consistency with zone objectives

The site is located in the E3 Environmental Management Zone. The objectives of the E3 zone are noted as:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control the proposed additions to the existing dwelling will be consistent with the individual Objectives of the E3 Environmental Management zone for the following reasons:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

The subject site is not identified as being of special ecological, scientific, cultural or aesthetic value. The additions have been appropriately designed to ensure that the existing significant vegetation including the trees on Council's road reserve can be retained. The site is located within the Council's foreshore scenic protection area, however as discussed previously in the Statement of Environmental Effects, the proposed additions are not prominent when viewed from the waterway given the separation, existing development to the north of the site and the existing vegetation.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed additions have been designed to retain significant vegetation. An Arborist Report has been prepared and submitted with the application in this regard. The proposal has been designed to ensure the existing trees on Council's road reserve are retained. The proposal also provides for landscaping of the site in accordance with the Landscape Plan submitted with the application.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

The subject site is separated from the foreshore by another residential property. The proposal does not require the removal of any significant locally occurring species and a landscape plan has been submitted providing for additional landscaping. The proposed additions will not be dominant when viewed from the foreshore given the separation, existing development to the sites north and the existing vegetation.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

The site proper does not immediately adjoin the foreshore. However the proposal provides for additional landscaping to assist in improving the landscaped character of the character.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed additions do not extend above the height of the existing dwelling on site and as such is considered to be of an appropriate height. The proposal will not have any detrimental impact on surrounding properties or the foreshore. The proposal retains existing significant vegetation and incorporates additional landscaping.

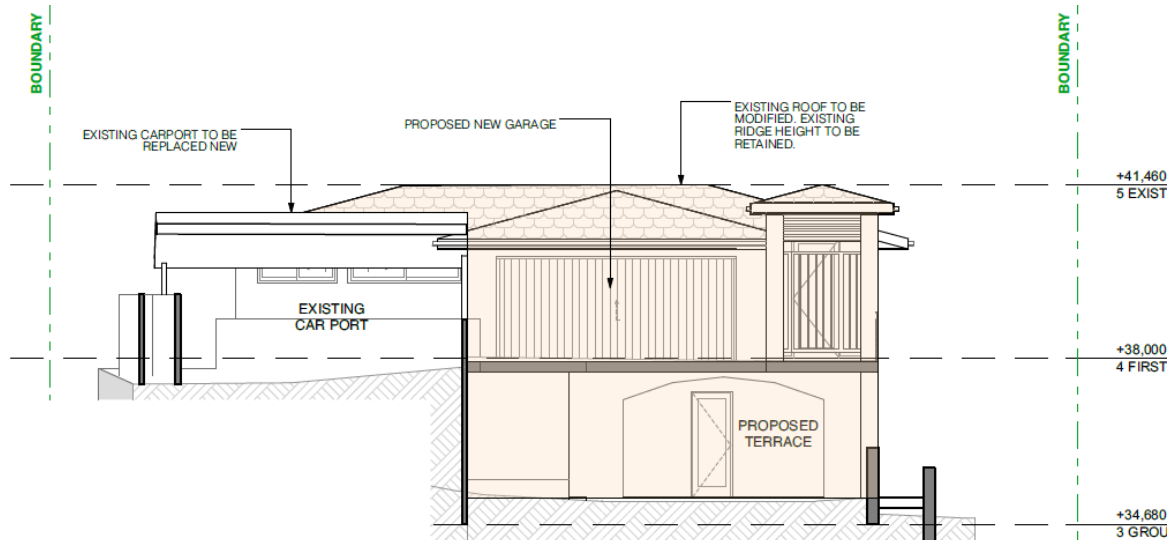
Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

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

The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

It is considered that this objective has been achieved. The proposed additions whilst exceeding the maximum height specified by this clause, do not exceed the height of the existing dwelling. As such the proposal will not obstruct any existing public views to Sydney Harbour from street level. The proposed elevation depicting existing and proposed outline is included below:



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

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

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

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

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

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

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

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

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

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

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

Comment: Not applicable.

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

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

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

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

Due to the existing overall building height and sloping topography of the site, the proposed additions will exceed the maximum height required by Clause 4.3A.

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

- Compliance with the height control is constrained by the siting of the building and sloping topography of the site.
- The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.

- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed additions do not extend above the height of the existing dwelling and as such will not obstruct any public views of Sydney Harbour from the road which is the objective of the height control.

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

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

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

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

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

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

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposal provides for additions to an existing dwelling with the height of the existing dwelling not be exceeded and therefore existing public views of Sydney Harbour being retained.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Seaforth Crescent, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

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

7.0 Conclusion

This development proposed a departure from the maximum building height development standard.

This variation occurs as a result of the siting of the existing building and sloping topography of the site.

This written request to vary the maximum building height specified in Clause 4.3A of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

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

Natalie Nolan
NOLAN PLANNING CONSULTANTS

APPENDIX C

OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For: Dwelling Additions/Alterations
At: 173 Seaforth Crescent, Seaforth
Owner: Titus Theseira
Applicant: Titus Theseira

1.0 Introduction

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

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Manly locality and refers to the maximum height noted within the “*Height of Buildings Map*” being 8.5m in this instance. The ‘Special Height Provisions’ also apply to the subject site. A separate Clause 4.6 has been prepared in this instance.

Clause 4.3 is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions provide for a maximum height of 10.532m which exceeds the numerical requirements of this clause.

3.0 Purpose of Clause 4.6

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

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling development which is consistent with the stated Objectives of the E3 Environmental Management, which are noted as:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- To provide for a limited range of development that does not have an adverse effect on those values.*
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing single detached dwelling which is sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

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

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

6.0 Justification of Proposed Variation

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

Paragraph 27 of the judgement states:

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

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

Precondition 1 - Consistency with zone objectives

The site is located in the E3 Environmental Management Zone. The objectives of the E3 zone are noted as:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control the proposed additions to the existing dwelling will be consistent with the individual Objectives of the E3 Environmental Management zone for the following reasons:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

The subject site is not identified as being of special ecological, scientific, cultural or aesthetic value. The additions have been appropriately designed to ensure that the existing significant vegetation including the trees on Council's road reserve can be retained. The site is located within the Council's foreshore scenic protection area, however as discussed previously in the Statement of Environmental Effects, the proposed additions are not prominent when viewed from the waterway given the separation, existing development to the north of the site and the existing vegetation.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed additions have been designed to retain significant vegetation. An Arborist Report has been prepared and submitted with the application in this regard. The proposal has been designed to ensure the existing trees on Council's road reserve are retained. The proposal also provides for landscaping of the site in accordance with the Landscape Plan submitted with the application.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

The subject site is separated from the foreshore by another residential property. The proposal does not require the removal of any significant locally occurring species and a landscape plan has been submitted providing for additional landscaping. The proposed additions will not be dominant when viewed from the foreshore given the separation, existing development to the sites north and the existing vegetation.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

The site proper does not immediately adjoin the foreshore. However the proposal provides for additional landscaping to assist in improving the landscaped character of the character.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed additions do not extend above the height of the existing dwelling on site and as such is considered to be of an appropriate height. The proposal will not have any detrimental impact on surrounding properties or the foreshore. The proposal retains existing significant vegetation and incorporates additional landscaping.

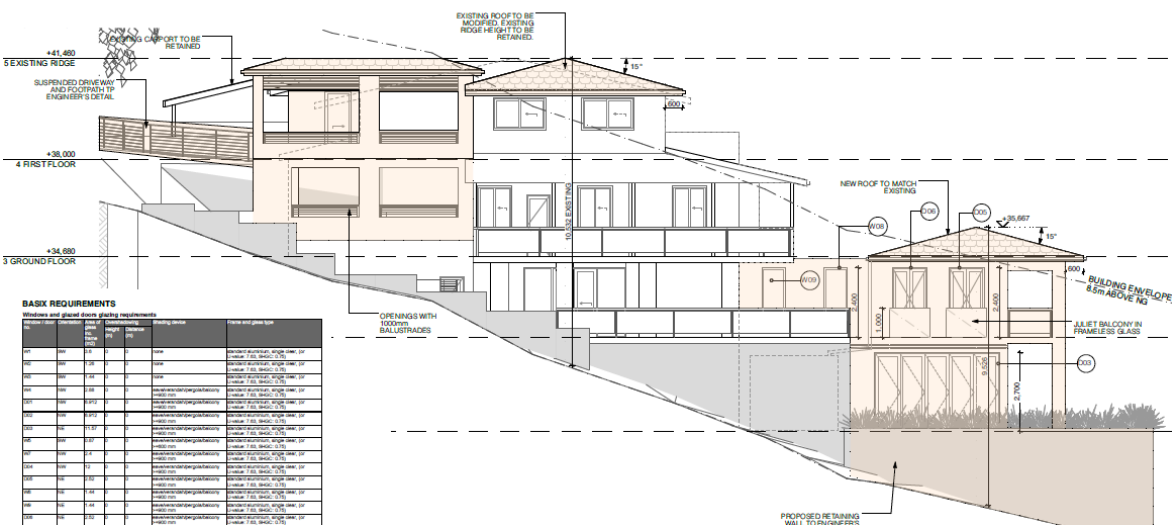
Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

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

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*



- (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: Views from public spaces (Seaforth Crescent) have been addressed in the body of this report and in Appendix 1. Given that the works do not extend above the height of the existing dwelling and the significant slope of land from the street and the properties on the opposite side to Seaforth Crescent, the proposed works will not obstruct views to or from residential development and public spaces.

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

Comment: The proposal maintains appropriate solar access in accordance with the controls of Council's DCP with all adjoining properties receiving in excess of 3 hours of solar access to private open space and north face living areas on the winter solstice.

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

Comment: The site is within the E3 Environment Management Zone and the proposed additions are located so as to retain existing vegetation. Further, the proposal does not result in any unreasonable cut or fill.

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

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

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

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

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

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

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

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

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

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

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

Comment: Not applicable.

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

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

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

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

Due to the existing overall building height and sloping topography of the site, the proposed additions will exceed the maximum height required by Clause 4.3.

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

- Compliance with the height control is constrained by the siting of the building and sloping topography of the site.
- The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed

from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.

- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed additions do not extend above the height of the existing dwelling and as such will not obstruct any public views of Sydney Harbour from the road which is the objective of the height control.

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

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

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

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

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

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

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposal provides for additions to an existing dwelling with the height of the existing dwelling not be exceeded and therefore existing public views of Sydney Harbour being retained.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Seaforth Crescent, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

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

7.0 Conclusion

This development proposed a departure from the maximum building height development standard.

This variation occurs as a result of the siting of the existing building and sloping topography of the site.

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

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

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

Natalie Nolan
NOLAN PLANNING CONSULTANTS